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WILL THE DUTCH REVIVE COLONIAL TARIFF PREFERENCES?

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While the Netherlands government under the able leadership of Mr. H. Colijn is making a valiant fight at Geneva for the lowering of customs barriers, a strong movement has developed in the country for the creation of a customs union between Holland and the East Indies. The movement in principle differs little from Lord Beaverbrook's Empire crusade, but it is without a leading journalistic personality to give it the publicity of the English movement.

The Dutch people have never lacked consciousness of the importance of the colonies for their economic welfare and their position in international politics. Van de Venter, the great friend of India, declared in his famous *Gids* article of 1899 on "A Debt of Honor" that "the welfare of the propertied classes in the Netherlands is very closely related to the retention of our colonies in East India." A recent number of a weekly established some months ago with the object of strengthening the imperial unity between the Netherlands and India stated that the number of persons directly or indirectly employed in Dutch industries exporting to the East Indies totals about 80,000, and that yearly approximately $160,000,000 in profits flow to the Netherlands from India, that 80,000 more people are employed in the consumption of this profit, and that the retention of India is a material, bread and butter interest for about 400,000 Netherlanders.[1] Even the Socialists at their recent Congress held at Utrecht freely admitted this economic dependence.

Since 1913 two new factors have entered the situation to draw attention to this economic interest in the East Indies; namely, the

[1] *Politieke Econ. Weekblad*, May 7, 1930.

decline of the Dutch share in the Indies exports and imports, and the rapidly growing nationalistic movement. Netherlands' share of Indian exports fell from 28.1 per cent in 1913 to 14.77 per cent in 1929; and her share in Indies imports fell from 33.2 per cent in 1913 to 18.31 per cent in 1929.[2] Netherlands' share in the Indies trade has decreased not only relatively, but in many cases absolutely. Of the butter imported into the Indies in 1913 as much as 56 per cent came from Holland, in 1927 only 6 per cent. Dutch butter has been crowded out by the Australian product. In the case of condensed and sterilized milk Holland has received sharp competition from Switzerland. With respect to earthenware, porcelain and glassware competition from Japan has practically driven the Dutch articles from the Indian market. In these articles in which the labor factor is large Japan has the advantage of cheap, unskilled labor, and also of lesser freight charges. The European goods are of higher quality but the undeveloped Indian consumer prefers the cheaper, lower quality goods. With respect to textile goods, too, the imports from Holland have been forced out by Japanese and Asiatic competition.[3]

The nationalist movement in Netherlands India is of very recent origin and practically in its infancy as compared with other Asiatic countries. The movement was practically non-existent in 1910. However, it has developed so rapidly and is gaining such momentum that the Dutch are stunned by it. They have not had sufficient time to adjust themselves mentally to the new conditions. The sympathetic attitude of the growing Social Democratic Labor Party to the nationalists' demands does not add to the serenity of the large number of Dutch people economically interested in the East Indies, for they feel that a larger measure of self-government would endanger their interests.

In the days of the East India Company the Dutch had made their profits out of trade. Only the first leg of the voyage from Europe to Ceylon and British India was unprofitable, for on this leg the Dutch vessels had little or no cargo. From British India goods were transported for sale in the Dutch East Indies; in the East Indies goods were taken on for sale in the Far East; and on

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[2]Verrijn Stuart, G. M. "Nederlands' Aandeel in den Handel van Indie," I, *De Economist*, XXVII, 107ff., and II, *De Economist*, XXVII, 286ff. Also statement of Central Kantoor van de Statistiek, *Bataaviasch Nieuwsblad*, March 26, 1930.

[3]*Ibid.*

the return voyage Far Eastern products were taken on and sold in the East Indies; in the East Indies goods were taken on for sale in British India and Europe; and in British India additional products were taken on for the European market. The weakness of the Dutch trade was that it had few European articles for sale in the East and thus had an unprofitable voyage out. The English were in a better position. The rapid development of their textile industry enabled them to sell cotton goods cheaper in British India than the Indian people themselves could make it. This was doubly injurious to the Dutch trade, for it drove the British Indian goods from the Indies market, thus rendering unprofitable also the second leg of the voyage of the Dutch ships, and it made competition with the English more difficult. The English possessed in their textiles an export article which made their voyage to India profitable. Moreover, since the Dutch had to buy their cottons from England, they could not pay as much in exchange for Indian products as could the English. This was the great problem which confronted the Dutch trade, and it was the tariff policy of the new Dutch government in the years after 1815 to make the production of textiles possible so as to be able to compete successfully with the English for the Eastern trade and shipping.[4]

During the period of the British occupation of Java, 1811–1816, import duties in all ports were equalized at 10 per cent of their invoice value, plus 30 per cent if the goods came in British bottoms and 60 per cent if the goods came in foreign bottoms. When in 1815 it became certain that Java was to be restored to the Netherlands the British placed the Dutch vessels on the same basis as their own, and just before the restoration import duties were lowered from 10 to 6 per cent. The British shaped a tariff such as they hoped the Dutch would maintain—low duties and no differentials between British and Dutch vessels.

The new Kingdom of the Netherlands, united with Belgium by the Congress of Vienna, was confronted by very difficult problems. Shipping and trade had to be re-developed. The Dutch fleet had been practically destroyed since 1795 and it appeared as if energy to build a new fleet was lacking. The textile industry had to be developed in order to obtain exports for competition with the British. Under the Napoleonic policy of prohibiting British imports the textile industry in Europe had been encouraged, and

[4]For the Netherlands tariff history see Colenbrander, H. T. *Koloniale Geschiedenis*, I, 12ff.

within the protected market of the French Empire a flourishing industry had developed in Belgium, but when France in 1814 was made to withdraw to its old boundaries, the industry suffered. William I, king of the Netherlands, saw in this situation the opportunity for a statesmanlike policy. He would pursue a tariff policy which would build up the southern textile industry and at the same time would encourage northern shipping and trading. This would unite the North and the South in mutual economic interests, and would give the king political support in both sections.

In 1817 the East Indian tariff law was changed to exclude British ships from the import preference which goods shipped in Dutch and British bottoms had enjoyed since 1815. In 1818 the import duties were lowered from 60 to 30 per cent plus 12 per cent if goods were carried in foreign bottoms and 6 per cent if carried in Dutch bottoms. In 1819 products coming in Dutch bottoms were permitted to enter free. As a result of these changes in the colonial tariff law the Dutch soon captured one-third of the trade but not quite one-third of the shipping. In 1824 the colonial tariff law was again modified; import duties on all cotton and woolen goods made in foreign lands west of the Cape were raised 25 per cent and if brought in from alien lands east of the Cape 35 per cent. This last provision was aimed at British shipping which came indirectly into the East Indies through Calcutta and Singapore. The British government contended that these preferential rates violated the terms of a treaty which had been concluded between the two countries during the same year. The treaty provided that the subjects and ships of one nation were not to pay more than 6 per cent import duty if similar goods coming from the Netherlands came in free, and not more than double in case of goods on which duties were charged if of Dutch origin. The Netherlands government contended that this provision had no reference to goods, but the British government protested so energentically that the Netherlands in 1836 raised the rate on Dutch cottons and woolens to 12½ per cent in order to be able to keep the British rates at 25 per cent.

A new tariff law was passed in 1837, under which goods in general imported in Dutch ships paid import duties of 6 per cent, and if imported in foreign ships 12 per cent. Certain other goods paid 12 per cent if in possession of a certificate of Dutch origin, otherwise 24 per cent. On cotton and woolen goods import duties

remained at 12½ and 25 per cent. This tariff law was evaded until 1855 by the so-called "secret linen contract" with the Nederlandsche Handelsmaatschappij,[5] under which this trading company agreed to spend a certain sum annually in the purchase of Dutch goods on which the duties if imported into India would be refunded.[6] Thus was the textile industry of Haarlem and Twente, now that Belgium was separated from Holland, to be encouraged.

A new constitutional law for Netherlands India was adopted in 1854 and in conformity with the increased parliamentary control which it introduced it was provided that henceforth Indian import duties should be regulated by parliamentary act. However this provision was not given effect until the Indian tariff law of 1865. Under this law import duties generally were placed at 6 per cent, some articles at 10 per cent with all differentials abolished except on earthenware, iron and copper ware, leather and leather goods, and manufactures of cotton and wool. These goods paid import duties of 10 per cent if accompanied by a certificate of Dutch origin; otherwise they paid import duties of 20 per cent, but this last rate was to be reduced to 16 per cent on January 1, 1869. The tariff law as a whole was to be revised before 1872. A new law, however, was not passed until 1872 and did not go into effect until January 1, 1874. This law imposed a uniform duty of 6 per cent and put a definite end to differential rights. Revisions of the Indian tariff law of 1886 and 1907 placed certain import duties a bit higher but the tariff maintained since 1874 has been purely fiscal.

The preferential policy from 1817 to 1874 was amply successful. The Dutch share of Indies imports—actually of Java alone, for during this period Java constituted practically the whole of the import territory—was one-third in 1818, one-half in 1827, and over two-thirds in 1830. The Belgian textile industry profited from it, though for only a short period. From the abolition of preferential duties in 1874 until the World War the Dutch were able to maintain an equal proportion of the Indies trade as against the British, but since the war the Dutch share has steadily declined while Great Britain has been able to maintain its pro-

[5] The Netherlands Trading Company.

[6] Under the terms of the 1836 contract the Trading Company agreed to purchase from 3 to 5 million florins worth of Dutch textiles per year and under the 1849 contract not less than 11 million florins worth yearly. Colenbrander, H. T. *op. cit.*, I, 19.

portion of the Indies trade. In 1913 the Netherlands still provided one-third of the Indian imports; in tonnage and number of ships fully one-third of the ships calling in East Indian ports were Dutch.

The Netherlands government in 1816 had also to solve the problem of inducing capital to engage in Indian shipping and trade. Since private capital could not be induced to enter the field, the king himself promoted the formation of the Netherlands Trading Company (Nederlandsche Handelsmaatschappij). This company, which has since developed into one of the largest banking corporations of the world, was to have no exceptional privileges except that of carrying government products. It built no ships of its own but merely chartered ships. Under the "culture system" which was in its heyday from about 1830 to 1870 and under which the natives paid their land tax in the form of agricultural products raised for the government, the amount of government products increased enormously and the Trading Company prospered. Since the government products consigned to the Trading Company had to be sold in Holland, the East Indian government was forced to wait a long time for its funds. To relieve the Indian government of this financial difficulty the Trading Company made two years advance payments on the consignment of products. As a result of this policy the government in 1839 was indebted to the Trading Company to the extent of 39,000,000 florins. Former Governor-General van den Bosch, the father of the "culture system" and at this time Minister of Colonies, desirous of putting an end to this embarrassing relationship, sought to cover this debt by a government loan. The States General rejected the proposal and van den Bosch resigned as Minister of Colonies. In 1849 the debt was reduced to 10,000,000 florins and the Company agreed not to demand payment of this before December 31, 1874, if continued consignment of government products would be assured them. This assurance the government gave but only after a reduction in the commission and interest rate had been consented to. The government regained its freedom in 1873, when it paid off the 10,000,000 florins still due the Company. The Company continued in the enjoyment of the consignment of government products, but with the abolition of the "culture system" the amount of government products rapidly fell off and the Company had to look to other enterprises for the employment of its capital. It went into the business of financing individual Indian

culture enterprises and soon led the older banks and agencies in this field. Gradually general banking became its main activity and today it has a capitalization of 80,000,000 florins with branch offices in all the leading commercial cities of British and Netherlands India and the Far East.

As was stated, there is now in the Netherlands an active movement for a return to the old preferential policy, and a small group are now asking for a customs union between the metropolitan country and India. The movement receives its impetus not alone from the declining share of the Netherlands in the East Indian trade but also from the growing obstacles to world trade in the shape of higher tariff walls and other restrictions of a protectionist nature. The Netherlands is already over-populated and must find an outlet for its population increases in the expansion of its industries and the export of manufactured goods. The great Zuider Zee work which is adding another province to Holland provides only a very temporary relief to the population pressure. It is generally agreed by all the leaders of the preferential and customs union movements that world free trade or a drastic reduction of tariff barriers would be better for a small country like Holland, but since it is hopeless to expect this, they insist that the Netherlands must create a larger free market for itself within its own empire. Holland can not remain a small free trade island in a sea of protection. The government and the group headed by Mr. Colijn maintain that a preferential tariff policy is an impossible solution and are therefore putting forth every effort to give leadership to the movement for the lowering of international economic barriers. These efforts, unless crowned with substantial success, can hold the movement for preferentials in only temporary check.

Until now the only political leader who has associated himself with the movement for the restoration of preferences is former finance minister H. A. Ijsselstein. From a political point of view he is working under very great difficulties, for he is a member of the Anti-Revolutionaire party, the party of which Mr. Colijn is the powerful leader. But discontent on the part of Dutch industrialists with the tariff policy of their government is already a matter of several years standing. Some years ago the government appointed a *Commission on Commercial Policy* to make recommendations on the commercial policy to be pursued under postwar world trade conditions. Whether the appointment of this

commission was a sop thrown out to quiet the discontented textile and other export manufacturers or whether the government is seriously thinking of going over to a policy of fighting tariffs is difficult to make out. At any rate there is a public controversy being waged between the *Society for an Active Commercial Policy*,[7] which advocates a fighting tariff, and the *Society for Free Trade*.

During the past two years the restoration of colonial tariff preferences or the formation of a customs union with the East Indies has been urged from many quarters.[8] Great prominence to the proposal of a customs union was lent by a recent book[9] by a leading East Indian colonial official, Mr. J. J. Schrieke, who for several years was Government Spokesman for General Affairs in the *Volksraad*, the East Indian legislative body, and is now Director of the Department of Justice in the East Indian government. Mr. Schrieke points to the prosperity of the United States as the outstanding example of the advantages of a great free trade area. Oddly enough he rejects preferences because open to all the charges of protectionism and pleads for an assimilated policy on free trade principles. He would allow all third countries to enjoy the benefits of the proposed customs union if these would reciprocally cast off their tariff barriers. Mr. Schrieke maintains that this policy would greatly further Dutch economic penetration of India and the Indonesians would have nothing to fear since the differences in climate and products are so great that mutual competition is excluded. The Dutch industries in India should not import their workers but employ natives. The policy would then win the approval and not the antipathy of the natives, and the system would result in such economic interdependence that neither East India nor the Netherlands would ever talk of separation.[10]

The difficulties and objections which the proposed preferential tariff policy meets are considerable. Can a small country like the Netherlands afford the international hostility which a departure from the open door policy would engender? Schrieke insists his proposal would involve no departure from the open door

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[7]See a book by Prof. P. A. Diepenhorst of the Free University of Amsterdam on *Eerherstel der Actieve Handelspolitiek (Restoration to Honor of the Active Commercial Policy)* published by the Vereeniging voor Actieve Handelspolitiek, Amsterdam, 1928.

[8]See article by A. De Graaf, *Indische Gids*, LI, 834ff.

[9]*De Indische Politieke.*

[10]*Ibid.*, pp. 142–153.

since it would leave membership to the Netherlands East Indian customs union open to all states, while other advocates of preferences arrive at the same conclusion on the basis of the Constitutional Revision of 1922, which eliminated the words "possessions" and "colonies" from the constitution. The constitution now states that "The Kingdom of the Netherlands comprises the territory of the Netherlands, Netherlands India, Suriname and Curacao." Thus the Netherlands and India are parts of the same state and free trade between these parts is the logical conclusion of this constitutional change, and is purely a domestic concern.[11] The trouble with this argument is that it proves too much. Certainly it was not the intention of the constitutional revision of 1922 to reduce India to a province of the Netherlands. The 1922 revision was intended as a liberalizing, not as a reactionary step. The above interpretation of the revision would mean that India would no longer have her own currency system, circulation bank, or tariff devised for her own needs.[12] The mandate system has made the open door one of the fundamental principles of colonial administration, and it does not seem as if the Netherlands could afford to ignore this powerful international influence. Mr. Colijn has not failed to emphasize this aspect of the question. He has publicly warned his countrymen that the position of the Netherlands in India demands great caution, that hostility on the part of other powers must be prevented, and that this is best achieved by an autonomous tariff applicable to all without distinction. He further states that the Netherlands must so conduct its Indian commercial policy that every mandatory power may take the Dutch policy as a model for its own mandates. "This is solely for the reason that such a policy gives us the best guarantee that we may continue undisturbed in our colonial task."[13]

From the fiscal point of view preferences and customs union encounter serious difficulties. They would force a new direction in the tax policy of both East India and Holland, and would make an independent financial policy more difficult. The customs union would involve a direct loss to the East Indian treasury of 15,-000,000 florins import and 1,000,000 florins export duty, and a direct loss to the Netherlands government of 7,000,000 florins

[11]See article by A. De Graaf, *Indische Gids*, LI, 834ff.

[12]See "De Tarievenpolitiek en de Grondwetsherziening van 1922" by Otto Oprel, *Indische Gids*, LI, 1046ff.

[13]*De Indische Gids*, LI, 91–96.

import duties, and in proportion as the customs union achieved its object the greater would be the losses to the Indian treasury, for then the imports from and exports to Holland would increase and the trade with other countries decrease. This increasing loss would then have to be made up for by raising the import and export duties as against other countries or by raising the other existing taxes and imposing new ones. This would lead either to constantly increasing protectionism or an entirely different taxation policy.

The drafting of a tariff law such as would attain the objects of a customs union, especially between two countries so widely differing in nature, would be a very complicated matter and would require mutual concessions. Indian interests, certainly, would not receive sole or primary consideration.[14] The export interests of the two countries differ greatly. The two most important export articles of the East Indies are rubber and sugar, but Holland consumes little rubber and imports little sugar. Its beet sugar industry is already depressed; East Indian preferences would kill it. The East Indies export agricultural and mineral products, which are generally free from import duties, and Holland exports manufactured goods, articles most suitable for import taxation. Tea is about the only article on which the Netherlands could give effective differentials, but Holland in 1928 imported only 13,000,000 florins worth, and exported over 60,000,000 florins worth of manufactured goods to India. It is difficult to see how the Netherlands could offer a *quid pro quo*.

The Philippine Islands have undoubtedly profited greatly from the preferential tariff relationship with the United States. The United States being a very large manufacturing country can more than supply Philippine demand for a very wide variety of manufactured articles. The price of these articles, therefore, in the Philippine market tends to be that of the world price less the preferences. The Philippine consumers, therefore, in most cases gain what their government loses in import duties. On the other hand, the American market can absorb more of the Philippine products than the islands can produce, and therefore most of the

[14]See article by C. van den Bussche, director of finance in the East Indian government, "Opmerking en aanteekeningen over het denkbeeld van een tolunie Nederland-NederlandIndie; De fiscaal-finantieele zijde" in *Koloniale Studien*, XIV, 70–73. See also articles by A. J. Schabeek in the same number of the above journal, pages 66–69, on the technical difficulties of customs administration.

preferences on Philippine imports into the United States go to the Philippine producer. But the relationship between the Netherlands and India is just the reverse of that between the United States and the Philippines; the Dutch dependency is far larger in population and area than the metropolitan country, the East Indies having a population of nearly 60,000,000 as against 7,500,000 people in Holland, and an area of 733,000 square miles as against 14,000 square miles. The economic advantages in the case of most articles of preference would rest with Holland and not with the East Indies.

But even if a customs union could be shown to be advantageous for the East Indies, it is doubtful whether it would find favor with the East Indian nationalists. Just because the East Indies are politically a dependency of Holland the nationalists would resent greater economic dependence. Free trade with Holland would very likely also kill what little industry there is in the Indies and would keep them agrarian. The Philippines offer an object lesson to the East Indian nationalists. Precisely because the preferential tariff relationship with the United States has been of great economic advantage to the Philippines the achievement of their political independence has been made more difficult. Any plan for giving the Philippines independence must cope with this problem and some sort of a transition plan agreed upon.

Nor is it certain that a preferential tariff would be in the real interest of the Netherlands. The interest of the Netherlands in the East Indies is not primarily industrial or commercial. It has found in the Indies not so much a market for her manufactured goods as an outlet for her capital in the huge agricultural industries there. The Dutch in India are the large scale agrarian entrepreneurs. More than two-thirds of the invested agrarian capital in the East Indies is Dutch. The Indies need foreign lands as an outlet for the agrarian products, and in this respect it may be said that the interests of a very considerable element of the Dutch population coincide with those of the East Indies. At bottom there may be said to be a clash of interests here between the Dutch manufacturers and the Dutch agrarian entrepreneurs.[15]

Preferences or a customs union would also run counter to the trend of international vertical division of labor, under which the newer centers of production specialize in the rougher, simpler and

[15]See article "Een Tolunie Nederland-Indie," by J. Van Gelderen, *Koloniale Studien*, XIII, 436–453.

cheaper articles, and the older production centers make the finer quality goods. The Dutch industries would give up their technical developments acquired in the production of higher quality goods and fall back on cheap, mass production for the colonial market.

The Dutch manufacturers will have to reconcile themselves to the fact that much of their trade in the East Indies is irretrievably lost. The World War freed the East Indies from the European market. Europe as a whole has lost to Asia and America. The European share of Indies imports fell from 60.8 per cent in 1913 to 45.8 per cent in 1926, the Asiatic share increased from 33.7 per cent in 1913 to 40.7 per cent in 1926, and the American share increased from 2.5 per cent in 1913 to 8.6 per cent in 1926. This can be accounted for by the developing industrialization of Asia and the post-war tendency of shipping goods, with the exception of high quality goods like tea and tobacco, directly from the colonies to the countries of consumption. The great increase in the American share of the Indies trade is in large part due to the rapid development in the production of rubber, little of which was produced in 1913, but enormous quantities of which are now being exported to the United States yearly.

Imports from the United States increased in recent years by the growing demand for American automobiles. Whether Europe will be pushed out of the East Indian market by Asiatic competition depends on industrial and social developments in the East. Europe still has the advantage in quality articles, but Japan may soon begin to produce these. And in the background is always the menace of the industrialization of China.[16]

Mr. H. Colijn, who opposes any departure from an autonomous, fiscal tariff with the open door for the East Indies, thinks Dutch trade could be improved somewhat by a change from *ad valorem* to specific rates. *Ad valorem* rates press more heavily upon goods of high quality than on goods of cheaper grade, thus putting the better goods further beyond the reach of the colonial consumers. A shift in the rate basis would be better for Dutch manufacturers since they produce largely high quality goods. Mr. Colijn states definitely that nothing more than this can be done through com-

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[16]See article by Verrijn Stuart, G. M., "Nederlands' Aandeel in den Handel van Indie, II," *De Economist*, XXVII, 286–300; and III, *De Economist*, XXVII, 369–389.

mercial policy to improve Dutch trade.[17] This is also the expressed opinion of the Amsterdam Chamber of Commerce and the Minister of Labor and Industry.[18] However, there is a bitter resentment against the protectionist policy of the other countries, and the latest American tariff has done not a little to strengthen the forces of those desiring a change of tariff policy.

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[17]"De Handelspolitiek voor Indie," *De Indische Gids*, L, 91ff.
[18]*Bataaviasch Nieuwsblad*, March 22, 1930.

SOME SOCIOLOGICAL PROBLEMS OF THE SOUTHWEST

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There is a difference, perhaps, between a *social problem* which centers in some social situation that a considerable number of observing and intellectually sophisticated persons have come to regard as a problem and a *sociological problem*, which is a social problem capable of being stated in a language peculiar to the sociologist and of being investigated by methods that are consistent with the presuppositions of the sociologist's discipline. It is with the latter that this paper is primarily concerned.

Several lines of attack at once appear. The investigator might make a census of research now under way in the Southwest supplementing the usual list of professorial and dissertation topics with a list of the term projects of undergraduates to guarantee breadth of perspective. He might poll the sociology group within the area as to the problems that most need study and classify the opinions collected. He might even excerpt the editorials of selected newspapers and periodicals with the view of extracting the information desired. Actually, none of these plans have been followed. Preparation, rather, has consisted in a survey of the files of *The Southwestern Political and Social Science Quarterly*[1] and the *Southwest Review*. The result has been (1) a record of the problems that appear to have concerned the sociologists during their annual meetings and at other intervening periods, and (2) a series of snap-shots and sympathetic bits of insight into life in the Southwest as interpreted by literary men. The latter, it seems not unfair to say, has been the more illuminating.

Three articles appearing at as many different times in the *Quarterly* indicate the trend of past thinking regarding the problems of the Southwest. Ten years ago Professor E. B. Reuter, then at Tulane, thinking of the entire South, including the Southwest, wrote, "The outstanding problems which, if not peculiar to the South, are to be found here in peculiar form, are problems of a community sort."[2] By this he meant "problems of com-

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[1]Cited hereafter in the text as *Quarterly*.

[2]E. B. Reuter, "Training for Social Service in the South," *S.P.S.S. Quart.*, I (1920–21), pp. 328–338.

munity organization and social education" due to (1) rural isolation, and (2) race cleavage and friction. Obviously, Professor Reuter was concerned, at the time, in securing a more adequately trained personnel for social work, and his "problems" were not sociological problems.

Three years later, Professor Max Handman, in presidential address before the Texas Council of Social Welfare (published in the *Quarterly)*,[3] concerned lest we "stick our heads in the sand and cry aloud that Texas is a rural community with no problems to solve," saw not rural but urban problems. His list, applying to Texas, may be summarized as follows: (1) Problems common to cities of 10–25,000, as health, unemployment, recreation—"normal social problems." (2) Additional problems due to continuous dislocation of population resulting from rapid urbanization, especially the housing problem. (3) Additional problems due to the presence in growing cities of "two groups who have difficulty in adjusting themselves to the environment," i.e., the Negro and the Mexican—problems of sanitation, housing, employment, illiteracy, and family disruption, accentuated in the case of the Negro because of the large percentage of transients, and in the case of the Mexican by absence of a common language and excessive number of casual laborers. (4) Problems due to overcrowding as judged by number of individuals per dwelling—"a problem in morals." (5) Problems due to high percentage of persons living in rented houses.

"Health," "housing," and "sanitation" may well arouse interest in administrative circles or at a conference of builders, visiting nurses, plumbing inspectors, social workers, or even city planners; but, as special items for research,[4] could hardly be expected to incite academic sociological consideration. Similarly, few sociologists would understand "normal social problems," and "problems in morals." Moreover, living in a rented house may be a fact, but it is difficult to see how it is a problem. Paying rent on the first of the month is, to be sure, a "problem," but so is paying taxes on the second Monday of December and the second

[3] Max Handman, "Social Problems in Texas," *Ibid.*, V (1924–25), pp. 255–263.

[4] See, for example, Malcolm M. Willey, "A Proposed Reorganization of the Introductory Courses," *Social Forces*, IX, No. 3 (March, 1931), in which the word "problems" is used to designate "fields of research" or "areas within which factual data are to be amassed" and not "situations calling for remedy and reform."

Monday of April. Professor Handman's classification is interesting as description but hardly illuminating for one ready to embark on an actual study. In fairness, it needs to be said again that seven years have passed since "Social Problems in Texas" was published. Radical revisions would undoubtedly appear were the article rewritten for a sociological audience.

More recently (1928), Jennings J. and Clyde Russel Rhyne of Oklahoma University have invited attention to problems unique to the Southwest, and have stressed the virgin character of the region as a laboratory for social research.[5] Their classification of problems includes: (1) Studies concerning race, with particular reference to specific groups in which blending of cultures and the process of cultural assimilation may be observed. (2) Studies of population, especially an analysis of the industrial personnel in oil boom towns and mining communities. (3) Rural studies, especially of the large farm or ranch, hitherto neglected. In this connection, these writers note that the average size of farms in the 1000-acre-and-over class is notably greater in the Southwest than in either the North Central or Mountain regions. The leads of Professor and Mrs. Rhyne are definite area leads; ethical, practical, and pathological exponents to problems are manifestly absent; and the suggested attack corresponds, in the main, to the cultural anthropologist's approach to the study of simpler peoples. Especially suggestive for the student of culture is the summary of the duplex features in the Big Jim Shawnee Band, Oklahoma, where two languages, two forms of dress, two modes of courtship, etc., exist side by side, each with an integrity of its own, the one called out by intra-Indian, the other by Indian-American, contacts. The case cited, alone, would seem clearly to warrant extensive research of the monographic variety, whether subject selected be Indian tribe, rural village, or urban area: and it may well be that the bulk of work in an unexploited region such as our own could profitably be of this character.

In the remaining pages of this paper certain additional sociological problems are suggested. In view of the manner of selection already noted, i.e., derived largely from clues contained in the *Southwest Review*, the particular problems cited represent, at best, merely a well considered opinion—an opinion, moreover, of a newcomer in the region, whose perspective is inescapably

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[5]Jennings J. Rhyne and Clyde Russell Rhyne, "The Southwest: A Laboratory for Social Research," *S.P.S.S.Quart.*, X (1928–29), pp. 33–41.

limited and colored by the fact of residence in a rapidly expanding urban center.

First, it would seem desirable, if one is concerned with the Southwest, to have an approximately accurate definition of the Southwest. Such a definition is not now at hand. The project of demarkating the area for sociological purposes is, therefore, offered as a worthy one. In anthropological literature "Southwest" means "those states lying westward from Texas to the Pacific."[6] To Howard Mumford Jones the Southwest means "Central and West Texas; western and southwestern Arkansas, Oklahoma, New Mexico, and Arizona."[7] Henry Smith states that the Southwest "is bounded on the east by the western edge of the Mississippi and Red River bottom land; on the north, roughly, by the line of the Missouri Compromise and the Santa Fé Trail; on the west by the Rockies and the Arizona desert; and on the south by Mexico and the Gulf."[8] An earlier editor[9] of the *Southwest Review* conceives the states of the region to be Texas, New Mexico, Arizona, Colorado, Oklahoma, Arkansas, and Louisiana. A. V. Kidder,[10] on the other hand, in his *Southwestern Archeology*, cites some three hundred publications, not one of which has anything, even remotely, to do with Texas, Oklahoma, Arkansas, or Louisiana, and confines his attention to the anthropological area further west. The Executive Council of the Texas State Historical Association[11] had a more restricted conception, and, moved by the desire to "better the Association's finances," transformed its official organ from *Quarterly Texas State Historical Association* to *Southwestern Historical Quarterly*, though calling attention to the members that "as much Texas material will hereafter be published as formerly." Conversely, Professor J. E. Pearce[12] notes that the southwest region, "particularly Texas, is yet to be put upon the archeological and ethnological maps." His definition, for anthropological purposes, would be "not Kidder's Southwest, but the Commercial Southwest; viz., Texas, Louisiana, Ar-

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[6]J. E. Pearce, "Need and Opportunities for Anthropological Research in the Southwest," *ibid.*, V (1924–25), p. 209.

[7]Howard Mumford Jones, "Space and Color," *Southwest Review*, XIV (1928–29), p. 483.

[8]Henry Smith, "A Note on the Southwest," *ibid.*, pp. 267–278.

[9]Jay B. Hubbell, Editorial, *ibid.*, X (1924–25), p. 92.

[10]J. E. Pearce, *op. cit.*, p. 209.

[11]*Quart. Texas State Hist. Assoc.*, XV (1912), p. 360.

[12]J. E. Pearce,*op. cit.*, p. 210.

kansas, and Oklahoma." The United States Department of Commerce,[13] however, though unconcerned with anthropology, has its own notions about commerce, and has recently labelled as "Gulf Southwest" "the States of Arkansas, Louisiana, Mississippi, Missouri, Oklahoma, the twenty-one counties of western Tennessee west of the Tennessee River and the State of Texas." Last, but not least, the Southwestern Social Science Association thinks of the Southwest as including the six states of Arizona, New Mexico, Texas, Oklahoma, Arkansas, and Louisiana, although it is doubtful, on one hand, whether Arizona ever thinks of the Association, and, on the other, it should be noted that Kansas and Missouri delegates were last year present at the annual meeting.

It is not necessary that such a study concern itself with the debate between faddists of regionalism as to whether the Southwest is heterogeneous or homogeneous, whether it is a mosiac or a synthesis of elements, whether there are many Southwests or only one. Nor is it implied that the sociologist's Southwest need coincide with the Southwest of other scientific groups. Certainly the artists will continue to cross the line and it is well that they are free to do so. The concept "region" (and even "culture area") is not a universal—a generalization that permits of no exception. It is rather, in a sense, a concrete numerical device. Comparisons will be more meaningful and regional statistics, it would seem, less confusing, if areas are precisely bounded. Obviously, there will be variations within each. A superimposing of the maps of the several Southwests, one upon the other, would provide a minimal beginning. Other methods for delimiting areas are already at hand, as freight rate and trade zones, plotting of selected culture traits, and the like. The expenditure of as much energy as has been devoted to the definition of natural areas within the city would seem a prerequisite to a consideration by the Bureau of Census of a proposal to assemble population and other statistics for sociological regional tracts, just as it has already assembled them for local communities in Chicago[14] and elsewhere, but surely

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[13]Edward F. Gerish, *Distribution of Dry Goods in the Gulf Southwest*, U. S. Dept. of Commerce, Domestic Commerce Series 43 (1931), p. 1.

[14]Bulletin of the Society for Social Research, Univ. of Chicago, December 1930, p. 2.

the game is worth the candle.[15] In connection with this entire topic, it is interesting to record Lewis Mumford's recent reference[16] to the round-table conference on Regionalism at the University of Virginia next summer, as well as the efforts of the Division on Human Ecology of the American Sociological Society to promote studies in regional ecology.

The problem of demarkating the Southwest region and sub-regions[17] suggests the presence of centers of dominance and focal urban points within the larger areas. Texas, alone, contains 83 cities with 5,000 or more population, five being in the 100,000 and over class. Pampa, Texas, shows a decade gain of 960.8 per cent, while Houston leads the larger cities with an advance of 111.4 per cent.[18] The presence of cities and, especially, the fact of their rapid growth suggests a second sociological problem, or rather a set of problems. Three, only, of many in the urban field, are cited here.

First, there is the problem of urban selection. Thus far, only two bases of urban trait selection have been clearly made out for United States as a whole, age and sex, i.e., cities select from the rural districts a disproportionate number of the young and a disproportionate number of women.[19] Texas, especially, because of striking urban increase and because her cities, though growing, are neither too large nor too old to be studied in historic and geographic perspective, would seem to be an ideal laboratory to push the inquiry concerning additional and variant factors in selection. Certainly, if we are ever to control our cities, it would appear that we must know what elements we are being required to assimilate.

Intimately interrelated with the problem of selection is what Professor T. C. McCormick[20] has termed urban ruralization. Certain elements in our cities resist urban assimilation, slow up the

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[15]See F. C. Chapin, "A Coöperative Study of the Northwestern Central Region of the United States," *Proceedings Am. Sociol. Society*, XXII (1928), pp. 202–204, for statement regarding twenty year regional study.

[16]Lewis Mumford, Review of "Folk-Say: A Regional Miscellany," edited by B. A. Botkin, *The New Republic*, LXVI, No. 851 (March 25, 1931), pp. 157–158.

[17]See J. E. Pearce, *op. cit.*, for interesting suggestions re sub-regions.

[18]"Texas: Number and Distribution of Inhabitants," Population Bulletin —First Series, *U. S. Bureau of Census* (1930).

[19]Sorokin and Zimmerman, *Principles of Rural-Urban Sociology*, Pt. V.

[20]Thomas C. McCormick, "Trends in Rural Life in the United States," *Amer. Jour. of Sociol.*, XXXVI, No. 5 (March, 1931), p. 730.

process of urbanization, and continue to maintain rural folkways and attitudes almost indefinitely. This is what Dr. H. L. Pritchett meant recently when, in friendly countering of Dr. W. C. Smith of Texas Christian University, he suggested that the problem that needs to be studied is not the "Second Generation Oriental in Hawaii,"[21] but the "Second Generation Cowpuncher in Fort Worth." There is little immediate danger that even Dallas, generally regarded as the most northern of the southern cities, will find it necessary to adopt the Los Angeles school board expedient of introducing its school children to a cow.[22] Both the cow and the accompanying chickens have already been located by an S.M.U. undergraduate sociology committee in the city's most elite residential section. These rural lumps in the urban body social need to be studied, both in terms of natural areas where they segregate and in terms of attitudinal resistances wherever found. It has recently been pointed out[23] that cities do not always conform to the Burgess ideal pattern of expansion; that slums and vice areas are not always located in zones of transition; that areas of transition are not always characterized by deterioration. It would be interesting in studying cities of the Southwest to note what variations in structural and functional pattern, if any, appear where rural resistances to urbanization are least, and where they are greatest.

In addition to urban selection and urban ruralization, a third sort of urban study might be oriented around the fact of occupation. As division of labor increases and the control of the local community based on neighborly sentiment declines, it will be increasingly important to know the form, quality, and strength of the occupational ties that divide and unite various population units. Few occupational monographs of sociologic significance are at hand, and, as yet, no really first-class ones. A thesis project entitled simply "A Sociological Study of a Dallas Business Block" is now going forward at S.M.U. Whether the approach is block, group, or something else, the field is unworked, and it would seem

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[21]Dr. Smith has completed such a study and is engaged in manuscript preparation of it.

[22]"Mmes. Guernsey and Jersey," *Time*, XVII, No. 9 (March 2, 1931), p. 35.

[23]Niles Carpenter, "Urban Expansion and Neighborhood Change," *Jour. of Social Forces*, IX, No. 1 (October, 1930), pp. 80–84.

that there might be much gain by simultaneously pushing occupational and local community studies in the Southwest region.

The reference to urban problems suggests a third category, rural problems. In spite of phenomenal city growth, the number of farms[24] in Texas has increased during the past decade by 59,974. This is all the more remarkable in view of a decrease of 150,466 farms for the United States as a whole. Clearly, there is work here. The student of rural life, in search of sociological problems, needs but read "Trends in Rural Life in the United States" by Professor McCormick.[25] Each paragraph heading is, in a sense, a hypothesis inviting further investigation and awaiting detailed confirmation or denial from specific studies. The tenant farmer because of his number in the Southwest and because of the perennial character of his difficulties ought, perhaps, to be separately noted. Between 1920[26] and 1925,[27] the last date for which there are available figures, the percentage of tenant farms to the total number of farms in the United States remained almost stationary, increasing but one-half of one per cent—from 38.1 to 38.6 During that same interval the per cent for the West South Central states (Arkansas, Louisiana, Oklahoma, Texas) increased from a regional figure, already the highest in the country, of 52.9 to 59.2 per cent. This means that in Texas alone there were 48,916[28] new tenant farmers in 1925 over 1920 and that three out of five farmers in the Southwest area were, at that time, tenants—tenants, in a territory, suggests Professor W. E. Garnett,[29] less than two generations from the time when practically unlimited amounts of land could be had almost for the taking. On top of the fact of tenant increase is the fact of amazing mobility. Fifty-one per cent of all tenants in Oklahoma, for example, moved in the single year of 1924, and one-fourth of all the land in the state changed hands as a result. If the tenants' families were average size farm families, over 275,000[30] men,

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[24] *Texas Weekly*, October 18, 1930, p. 2.

[25] McCormick, *op. cit.*, pp. 721–734.

[26] Newell L. Sims, *Elements of Rural Sociology*, p. 174.

[27] C. J. Galpin, *Farm Population Associated With Size of Farms, Etc.*, U. S. Dept. of Agric., Bureau of Agric. Economics (December, 1930), p. 8.

[28] *Texas Weekly, op. cit.*, p. 2.

[29] W. E. Garnett, "Present Status of Farm Tenantry in the Southwest," *S.P.S.S.Quart.*, IV (1923–24), p. 111.

[30] J. T. Sanders, "The Significance of Oklahoma Farm Tenant Moving," *Proceeding Okla. Acad. of Science*, VII (1927), pp. 209–213.

women, and children were involved in this migration. The congestion occurring when an infantry division of 20,000 men misinterprets orders and moves across the path of another division makes good reading at the breakfast table, especially if Pershing[31] tells it, but the uprooting of a hundred thousand school children of tenants in Oklahoma is less exciting though, perhaps, not less important. Although one may not be impressed with Professor Garnett's ten factors[32] in the present status of the tenant (reasons why tenants occupy the tenant status), ranging from inferior biological heredity, through natural shiftlessness, bad luck and maladjustments in the marketing system, to weak vitality on account of ravages of hook worm or malaria, and overwork of women during the child-bearing period, he can scarcely deny another statement of this writer, viz., "The Sociologists, the Biologists, the Psychologists, the Educators, and the Political Scientists have not made as good progress in digging out their angles of the problem as the Economists have with their angle."[33]

Tenantry, insofar as the sociologists have concerned themselves about it, continues to be discussed in evaluative terms,[34] and, on the whole, as something vicious and pernicious. It may, perhaps, be taken for granted that there are disadvantages in such a system, but so are there disadvantages in ownership. Nor is a consideration of the advantages of tenantry what is needed. What the sociologist may reasonably be expected to do, if he is to carry his part, is to measure differential degrees of group consciousness in the tenant population, define the types of control emerging in these divergent situations, describe the tenants' institutions and practices from within as well as just from without, and state what tenantry means to the tenant.

If tenantry is an insistent fact in the Southwest, so is race. With a substantial Creole and negro population in Louisiana, superimposed on earlier Arcadian French and Spanish elements; with a legislature in New Mexico carrying on bi-lingual sessions, and gubernatorial candidates in the state addressing their constituencies first in Spanish and then in English;[35] with an Oklahoma, originally set aside for the Indian, later opened to white

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[31]John Pershing, "Two Divisions in a Race to Capture Sedan," *Memoirs*, Chap. 76, *Dallas News*, March 28, 1931.

[32]Garnett, *op. cit.*, pp. 119–120.

[33]*Ibid.*, p. 120.

[34]Helen B. Watson, "Consequences of Tenancy as Treated in Seven Rural Sociology Text-Books" (Unpublished manuscript), August, 1930.

[35]"Issues Clouded in New Mexico," *Los Angeles Times*, October 29, 1928.

occupancy and inhabited by Negro freedmen of the Indians, as well as Negro homesteaders, and lately invaded by Mexicans; and finally, with a Texas that has flown five flags, to say nothing of the omnipresent Negro or the fact that Dr. Carl Rosenquist[36] has recently discovered Swedes in the state; it goes without saying that there are unsolved race questions of a unique sort that may well be included as a fourth series of problems. Three of these only are cited. First, there is the problem mentioned by Rhyne and Rhyne of culture blending and its psychological counterpart of cultural assimilation. Under what conditions does social reorganization take place without attendant demoralization? How rapidly and with what results may racial assimilation be speeded up? Much has been done in this field but monographic reports are needed in each cultural situation. Second, there is the problem of race prejudice. Less is known here, although more has been written. Nowhere, however, have the aspects of prejudice capable of study and the methods by which study may be fruitfully carried forward been more carefully stated than by Professor Ellsworth Faris in an article entitled, "Racial Attitudes and Sentiments."[37] Third, there is the related but more concrete problem of lynching. Perhaps lynching is a fact, not a problem. It is so striking and persistent a fact in the Southwest, however, that it merits special mention. Twenty-five lynchings[38] occurred last year in the United States. Five of these were in two of the states of our region. It is well established that lynching is not alone the crime of hoodlums and ignorant irresponsibles. It is known, moreover, that mob murders tend to occur in those localities where a body of law is superimposed upon a system of mores that does not correspond. The characteristics of the lynching situation need to be enumerated just as Hiller has stated the characteristics of the strike situation, i.e., those elements that must be present before a strike can come into existence. Moreover, with 4,000[39] instances in the records, there is abundant data to study the natural history of lynching from the early stages of unrest and the actual crime, through successive changes of venue

[36]Carl Rosenquist, *The Swedes in Texas*, Univ. of Chicago Ph.D. Thesis, 1930.

[37]Ellsworth Faris, "Racial Attitudes and Sentiments," *S.P.S.S.Quart.*, IX (1928–29), pp. 479–490.

[38]*Editorials of the Month for Texas*, January, 1931, p. 23.

[39]E. B. Reuter, *The American Race Problem*, pp. 366–371. During the period 1882–1924, 1282 of the 4,492 lynchings reported in United States occurred in Texas, Louisiana, Arkansas, and Oklahoma.

of the cases of the accused to the final dismissal of charges. This has not yet been done in a manner satisfactory to the sociologist. It would even appear that institutions adjacent to communities where lynchings are anticipated or are in progress might dispatch specially qualified professors to disturbed areas for the purpose of recording hourly variations in crowd behavior. A study of lynchings that failed would be an equally instructive enterprise.

Finally, in addition to a definition of the Southwest region and sub-regions, and the urban, rural, and racial problems noted, problems pertaining to the Mexican because of their international significance are separately cited. The popular East Texas stereotype of the urban Mexican is that of an individual criminally inclined, inadequately controlled by family organization, a too frequent charity case, and continuously motivated by desire to return to Mexico. This picture may be statistically accurate but it does not, according to Professor Paul S. Taylor,[40] apply in Dimmit County, Winter Garden district, south Texas, nor in the other places he has made his observations. The following facts will serve to distinguish Professor Taylor's Dimmit County Mexican from the curbstone stereotype. First, law violation by Mexicans in the county is "inconsequential." Arrests are "far less than their numbers," and the majority of these are for the "pacific offense of gambling." Second, affectional life in the family is strong, making it a valuable control agency. Third, poverty cases are handled not by organized American charity (for none exists in the county) but through mutual aid within the group, and by appeal to individual American friends when self help is insufficient. Lastly, announced intention to emigrate is essentially deceptive when accepted literally. Efforts to evade deportation, reluctance of children born in the United States to live in Mexico, and purchase of residential lots are tangible indices of purpose to remain, and imply acceptance of the laborer's status. All of this suggests the inadequacy of present information and the urgency of disinterested study if satisfactory American-Mexican relations are to follow. A notable feature of the agitation against Mexican immigrants, says Mary Austin,[41] is that it is most rigorous in localities where they are fewest in number. This attitude requires explanation. Verily, the harvest is plentious and the laborers are few.

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[40]Paul S. Taylor, *Mexican Labor in the United States: Dimmit County, Winter Garden District, South Texas* (1930).

[41]Mary Austin, *Southwest Review*, XIII (1927–1928), p. 116.

JUDICIAL FAIR VALUE AND THE PRICE LEVEL

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Prior to 1870 slight attempt had been made to regulate public utilities. By that date, however, it was becoming sufficiently evident even to the most devout apostles of *laissez faire* that the benevolent results of unregulated competition had somehow failed to materialize in certain of our great industries—notably in railway transportation. Where competition actually existed, the result was violent rate wars, fluctuations in security prices, destructive receiverships, financial chicanery, political corruption, and general economic chaos. Where competition had ceased to exist, the vast and unregulated power of monopoly all too often eventuated in extortionate rates, and unjust and unreasonable discriminations.

Our previous economic-political ventures provided no adequate scheme of arrangements for handling these baffling problems. The situation became acute in the 'Seventies. The farmers of the Central West began resorting to dubious political expedients. Constitutional conventions asserted the ancient right of the state to regulate industries affected with a public interest. Legislatures, dominated by farmers who were tired of growing sixty cent wheat on hundred dollar lands, and small town merchants who had bought worthless railway stocks, proceeded to express that right in specific legislation. This legislation was not always intelligent nor even intelligible; and certainly it was often unfair to the utilities, and also subversive of the very public interest it purported to protect.

The utility managers bitterly fought the specific enactments and also the theory of control underlying them. Defeated at the polls and rebuffed in legislative halls, they appealed to the courts —from time immemorial the staunch protectors of private rights against the malicious encroachments of ignorant and socialistic legislatures. Opinions on the seven so-called Granger Cases were handed down by the United States Supreme Court in October, 1876. The key case was *Munn v. Illinois*.[1] The Supreme Court in no uncertain terms repudiated the contention of the utilities

[1] 94 U. S. 113.

that they were private businesses and hence not amenable to special legislative regulation. Furthermore, the Court (as constituted at that time) was obviously unwilling to set any definite limits on the power of the state to regulate. In fact the Court declared the power to set maximum or even specific rates and prices a legislative prerogative not subject to judicial review. "We know this is a power which may be abused. . . . (But) for protection against abuses by legislatures the people must resort to the polls, not to the courts." It is worthy of note that even in this first case involving this vital point there was sharp difference of opinion in the Court; Mr. Justice Field and Mr. Justice Strong dissenting.

Within a decade the personnel—and the opinion—of the Court had changed. Five members of the *Munn v. Illinois* Court had entered another jurisdiction. One member (Chief Justice Waite) had apparently reversed his position on the vital point at issue. In 1886 in *Stone v. Farmers Loan & Trust Company*[2] this new Court, in an *obite dicta*, foreshadowed the reversal of *Munn v. Illinois* with the statement, "It is not inferred that this power of limitation or regulation is itself without limit." Three years later in *Chicago, Milwaukee & St. Paul v. Minnesota*[3] the same Court declared, "It is necessarily within the power of the courts to declare illegal and unreasonable a rate fixed by a legislature or commission." In 1893, in *Reagan v. Farmers Loan and Trust Company*,[4] the Court actually declared a schedule of rates, set by the Railway Commission of Texas, unreasonable and illegal under the Fourteenth Amendment to the Constitution.

These three cases established the basic principle that legislative rates could not be set so low as to take property from utilities. But no concise definition of this "property" which was inviolable under the Fourteenth and Fifth Amendments was attempted by the Court for another five years.

The key case on this point which has been the center of a thirty-two year political-judicial-economic storm of unabated fury reached the Court in 1898. In its opinion on this celebrated case *(Smyth v. Ames)*[5] the Court reiterated its dictum that rates for utilities could not be set so low as to deny the company a fair re-

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[2]116 U. S. 307.
[3]134 U. S. 418.
[4]154 U. S. 362.
[5]169 U. S. 466.

turn on a fair value of its property. Then the Court proceeded to the task of defining this "fair value of property" which might not be disturbed by mere legislative enactment.

It should be noted that the Court entered upon its task with forebodings. Mr. Justice Harlan warns his colleagues "How such compensation [a fair return on a fair value] may be ascertained, and what are the necessary elements in such inquiry will always be an embarrassing question." However, the Court proceeds: ". . . the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the company under particular rates prescribed by statute, and the sum required to pay operating expenses . . . . are to be given such weight as are just and right in each case." Then, to provide for any value determinants which might have been overlooked, the recital concludes: "We do not say that there may not be other matters to be regarded in estimating the value of the property." Certainly that ought to cover the situation to the satisfaction of all parties concerned.

To say that the Court intended this as a precise mathematical formula for the determination of a rate-base would be to accuse the members of that august body of deplorable ignorance of the whole question at issue. Two of the five factors named, (1) earning power under a particular rate schedule, and (2) operating expenses, obviously could have no relation to a rate-base. Another, market value of its bonds and stocks, as obviously is a resultant of the rates prescribed and hence could hardly be urged as a rate determinant. The remaining two, namely: original cost of construction (of which, "the amount expended in permanent improvements" is a necessary component part) and, "the present . . . . cost of construction," cannot possibly be used together in a world of constantly shifting price levels. They are mutually exclusive. Either one or the other might conceivably be made the sole determinant of the rate-base. But if both are used, the rate making authority is faced with the baffling problem of locating a point somewhere between the two resulting figures. The bewildering results of an attempt to do this very thing are written across thirty-two years of the records of every utility commission and court of adequate jurisdiction in the United States. One might study the entire history of American jurisprudence without finding another body of litigation to set beside this.

Probably the most scathing arraignment of the *Smyth v. Ames* rule is contained in Mr. Justice Brandeis's assenting-dissenting opinion in the Southwestern Bell Telephone Case.[6] He says ". . . . the so-called rule of *Smyth v. Ames* is, in my opinion, legally and economically unsound. . . . The experience of the twenty-five years since that case was decided has demonstrated that the rule there enunciated is delusive. In the attempt to apply it insuperable obstacles have been encountered. It has failed to afford adequate protection either to capital or to the public. It leaves open the door to grave injustice. To give to capital embarked in public utilities the protection guaranteed by the Constitution and to secure for the public reasonable rates, it is essential that the rate-base be definite, stable, and readily ascertainable." And later, he concluded, "Every figure . . . . that we have set down with delusive exactness is speculative."

This criticism touches the heart of the problem. Every effort at effective and intelligent public utility regulation has been seriously hampered, if not entirely nullified, by the ever-present shadow of *Smyth v. Ames*. The efforts of the Commissions and the courts to understand and apply the "rule of rate making" has led to an endless round of bitter wrangles, costly law suits, and confusion. The spectacle of the Supreme Court trying to ride two horses, which persist in going in opposite directions, would be ludicrous enough but for the fact that approximately one-fifth of the wealth of the United States is "on the Roman race."

It is worthy of note that *Smyth v. Ames* reached the Supreme Court in the very year in which the general price level reached the lowest figure of the past hundred years. Obviously, the utilities would favor original cost as the method of valuing their plants, built in periods of much higher prices. The representatives of the public interest, on the other hand, would contend for a rate-base determined by reproduction costs at the existing lower prices.

But in that very year the price level began its twenty-two-year climb. Within ten years the steady rise in costs of labor and materials had reversed the situation. Now we find the utilities appealing to the courts to protect the enhanced "value" of their businesses. In the first case to reach the Supreme Court after this change in basic conditions *(Willcox v. The Consolidated Gas*

[6]262 U. S. 276.

Company)[7] the Court, at least in principle, recognized the contention of the utility.

Mr. Justice Peckham in his decision says, "And we concur with the Court below in holding that the value of the property is to be determined as of the time when the inquiry is made regarding the rates. If the property, which legally enters into the consideration of the question of rates, has increased in value since it was acquired, the company is entitled to the benefit of such increase. This is, at any rate, the general rule."

The full significance of this dictum did not appear for many years. However, the price level persistently continued to mount; the horses were drawing apart. In June, 1913, the Minnesota Rate Case[8] reached the Supreme Court. Mr. Justice Hughes in delivering the opinion of the Court says, "It is clear that in ascertaining the present value we are not limited to the consideration of the amount of the actual investment . . . . as the company may not be protected in its actual investment if the value of its property be plainly less, so the making of a just return for the use of the property involves a recognition of its fair value if it be more than its cost. The property is held in private ownership and it is that property, and not the original cost of it, of which the owner may not be deprived without due process of law."

If these two cases, and in six minor ones which were decided before the War,[9] the Supreme Court, whenever it faced this problem, reiterated the proposition "If the property . . . . has increased in value since it was acquired, the company is entitled to the benefit of such increase."

Then came the war with its enormous increase in prices. The utilities appealed to the commissions for rate increases. If denied they appealed to the Federal Courts for protection of their property values. And now the full significance of fluctuating prices appeared. The difference between the actual cost of a public utility property constructed in 1900 and the cost of reconstructing

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[7]212 U. S. 19, January 4, 1909.

[8]230 U. S. 352.

[9]*San Diego Land & Town Company v. National City*, 174 U. S. 739, May 22, 1899; *Cotting v. Kansas City Stock Yards Company*, 183 U. S. 79, November 25, 1901; *San Diego Land & Town Company v. Jasper*, 189 U. S. 439, April 6, 1903; *Stanislaus County v. San Joaquin and Kings River Canal and Irrigation Company*, 192 U. S. 201, Jan. 18, 1904; *Knoxville v. Knoxville Water Company*, 212 U. S. 1, Jan. 4, 1909; *Missouri Rates Cases*, 230 U. S. 474, June 16, 1913.

the same property in 1920 became visible even to the naked eye of the Supreme Court. The horses definitely parted. The Court split asunder. Of the members, Mr. Justice Brandeis, Mr. Justice Holmes, and Mr. Justice Stone have rather consistently approved some variety of actual cost. Mr. Justice Taft, Mr. Justice Sutherland, Mr. Justice Butler, Mr. Justice McReynolds, and Mr. Justice Van Devanter even more consistently (with the unexplained exception of the Georgia Railway and Power Company Case) disapproved actual cost and favored some variety of reproduction cost. Mr. Justice Sanford has ridden both steeds.

Since 1920 some fifteen decisions involving this issue have been handed down by the Court,[10] four on so-called key cases. The first of these was the famous Southwestern Bell Telephone Case.[11] Here the issue was squarely presented. The utilities commission had evaluated the property of the company on an approximation of original cost. The company demanded a valuation based on reproduction cost at the vastly higher prices prevailing in 1923.

Mr. Justice Brandeis in one of the most vigorous dissenting opinions in the history of the Court (in which he was joined by Mr. Justice Holmes) made a powerful plea for prudent investment. After reviewing the entire history of "judicial fair value" he concludes, "it is, therefore, feasible now to adopt as the measure of a compensatory rate the annual cost, or charge, of the capital prudently invested in the utility. And hence, it should be done."

His arguments were in vain. The majority of the justices speaking through Mr. Justice McReynolds severely criticised the commission because it ". . . . undertook to value the property without according any weight to the greatly enhanced cost of material, labor, supplies, etc., over those prevailing in 1913, 1914, and 1916.

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[10] *Newton v. Consolidated Gas Co.*, 258 U. S. 165, March 6, 1922; *Galveston Electric Co. v. Galveston*, 258 U. S. 388, April 10, 1922; *Houston v. Southwestern Bell Telephone Co.*, 259 U. S. 318, May 29, 1922; *Southwestern Bell Telephone Co. v. Public Service Commission*, 262 U. S. 276, May 21, 1923; *Brush Electric Co. v. Galveston*, 262 U. S. 443, June 4, 1923; *Bluefield Water Works and Improvement Co. v. Public Service Commission*, 262 U. S. 679, June 11, 1923; *Georgia Railway & Power Co. v. Railroad Commission*, 262 U. S. 625, June 11, 1923; *McCardle v. Indianapolis Water Co.*, 47 Sup. Ct. Rep. 144, Nov. 22, 1926; *Ottinger v. Consolidated Gas Co.*, 47 Supreme Court Reporter 198; *Ottinger v. Brooklyn Union Gas Co.*, Supreme Court Reporter 198; *Ottinger v. King's County Lighting Co.*, Supreme Court Reporter 198.

[11] 262 U. S. 276.

. . . . It is impossible to ascertain what will amount to a fair return upon properties devoted to public service without giving consideration to the cost of labor, supplies, etc., at the time the investigation is made. An honest and intelligent forecast of probable future values made upon a view of the reliable circumstances is essential. If the highly important element of present costs is wholly disregarded, such a forecast becomes impossible. Estimates for tomorrow cannot ignore prices of today."

This decision was immediately hailed by the utilities as the long-sought final word on evaluation. But the language of the opinion was not quite clear. Furthermore, the Court had allowed an increase of only 25 per cent over the commission's figure, while one of 100 per cent would have been more nearly correct on a strict reproduction cost basis. Consequently, lower courts and commissions, seeing the discrepancy between what the Court said and what it did, continued sporadically to give some weight to original cost in valuation proceedings.

Just one month after the Southwestern Bell Case the Supreme Court suffered a strange, and thus far unexplained, mental aberration. Two important decisions were handed down on the same day, June 11, 1923. In the first case, the Bluefield Water Works Case,[12] the Court, speaking through Mr. Justice Butler, roundly scores the commission for its use of original cost valuation, and the State Supreme Court for approving the commission's findings. After reviewing the work of the commission and the decision of the lower court, the opinion states, "The record clearly shows that the commission in arriving at its final figure did not accord proper, if any, weight to the greatly enhanced costs of construction in 1920 over those prevailing about 1915 and before the War . . . . the Company's detailed estimated cost of reproduction new, less depreciation, at 1920 prices, appear to have been wholly disregarded. This was erroneous. . . . Rates which are not sufficient to yield a reasonable return on the value of the property used, at the time it is being used to render the service, are unjust, unreasonable, and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment." Again the majority of the Justices had spoken, in almost intelligible language, for reproduction new less depreciation.

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[12] *Bluefield Water Works and Improvement Co. v. Public Service Commission*, 262 U. S. 679, June 11, 1923.

On the same day, in the Georgia Case,[13] the original cost faction of the Court had its inning. Mr. Justice Brandeis, delivering the opinion of the Court, flatly and unequivocally contradicts the findings of the Court in the Southwestern Bell and the Bluefield Water Cases. The opinion recites that, "The objections mainly urged relate to the rate-base; and one of them is of fundamental importance. The Companies assert that the rule to be applied in valuating the physical property of a utility is reproduction cost at the time of the inquiry, less depreciation. The 1921 construction costs were about 70 per cent higher than those of 1914, and the earlier dates when most of the plant was installed. So much of it as was in existence January 1, 1914, was valued at an amount which was substantially its actual or its reproduction cost as of that date. The companies claim that it should have been valued at its replacement cost in November, 1921—the time of the rate inquiry. . . ." It concludes with this amazing statement: "The refusal of the Commission and of the lower court to hold that, for rate-making purposes, the physical properties of a utility must be valued at the replacement cost less depreciation was clearly correct."

How Mr. Justice Butler, who delivered the opinion in the Bluefield Water Case—*on the same day*—could have acquiesced in this decision is a bit obscure to a layman. Mr. Justice McKenna, in a caustic dissent, remarks, "The contrariety of decision cannot be reconciled. . . . It will be observed that the commissions did exactly the same thing, and yet the action of one is affirmed, and the action of the other is reversed."

Immediately there was a babel of conflicting tongues. The defenders of original cost acclaimed the Georgia Railway decision as the voice from Sinai, and set about "harmonizing" the decisions in the three cases.[14]

The utilities hailed the Bluefield decision as the legitimate lineal descendant of a royal line running straight back to *Smyth v. Ames*. So everybody was satisfied, except the utilities—and the people—and the commissions—and the courts.

This chaotic welter of conflicting interpretations continued for three years and six months. Then the Court regained its mental

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[13]*Georgia Railway & Power Co. v. Railroad Commission*, 262 U. S. 625.

[14]One such attempt to explain away the obvious contradictions in the three decisions is made by Dr. John Bauer in his brilliant study *Effective Regulation of Public Utilities*, pp. 99–103.

equilibrium and reasserted its dominant economic philosophy in the Indianapolis Water Case.[15] Years of sharp controversy in the Court had obviously somewhat clarified the thinking of the Justices on the implications of their theories of "fair value." Mr. Justice Butler delivered the majority opinion and in no uncertain terms defended reproduction cost at "spot" prices. He says, "If the tendency of prices is not definitely upward or downward, and it does not appear probable that there will be a substantial change of prices, then the present value of lands, *plus the present cost of constructing the plant* less depreciation, if any, is a fair measure of the value of the physical elements of the property." No utility could desire a more unequivocal approval of reproduction cost than this. As a matter of actual figures the Court did not allow the utility quite all the advantages of the huge increase in prices which had occurred since the property was constructed. But that was only because the utility had not claimed it. In fact, as one writer[16] has cleverly expressed it, "The general impression given by Mr. Justice Butler's discussion of the matter . . . . is that the company was too modest in its claims of value, and is being gently tapped on the wrist by the Federal court for not demanding a higher figure. . . ." Needless to say, Mr. Justice Brandeis, Mr. Justice Stone, and Mr. Justice Holmes, as usual, dissent.

If any doubt were left as to the willingness of the majority faction of the Court to wreck the whole structure of public regulation of utilities, so painfully constructed through sixty years of costly trial and error, such doubt was dissipated by the verdict in the O'Fallon Railroad Case.

For fifteen years the Interstate Commerce Commission had been engaged at the onerous task of devising a rate-base for railroads. Considerably over $100,000,000 had been spent on the project. The Commission had made an exhaustive study of all the theories of "value," expressed or implied, in Court decisions and legislative enactments. The relation of each to the general problem of effective railway regulation was carefully considered. Ultimately the Commission, by a six to four decision, flatly rejected reproduction new less depreciation, and adopted a composite scheme of valuation predominantly historical cost. All property in existence in 1914 was valued as of that date; in other words, at cost of re-

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[15] *McCardle v. Indianapolis Water Co.*, 47 Supreme Court Reporter 144.

[16] Whitten, *Valuation of Public Service Corporations*, Vol. 1, p. 180.

production less depreciation at 1914 prices. All additions subsequently made were valued at actual cost. Lands were valued at replacement costs as of the date of evaluation. This is the so-called "split inventory" method which had been specifically overruled by the United States Supreme Court in the Southwestern Bell, and the Indianapolis Water Company, and the Bluefield Water Works Cases.

The O'Fallon Case was before the Interstate Commerce Commission from 1924 to 1928. At last it appeared on the docket of the Supreme Court. By common consent it was made the key case. The whole issue between the original-cost advocates and the reproduction-new proponents was to be fought out on this one small battlefront.

It is no mere figure of speech to say that the eyes of the entire business community were on the Supreme Court. The case had been heralded as "The Greatest Lawsuit in History." If the amount of wealth involved be taken as the sole criterion, this is no exaggeration. Various official and expert estimates of the actual amounts involved run from thirty billions of dollars to over forty billions. The latter figure is more than ten times the assessed valuation of all property in the State of Texas.

Commissioner Eastman in his brilliant defense of the Commission's figures gives the following summary: "But taking $18,000,000,000 [the tentative valuation set by the Commission in 1920] as a base and applying the Bureau's ratios, the value of precisely the same structures would have become $41,400,000,000 in 1920, $35,100,000,000 in 1921, $28,300,000,000 in 1922, and $31,300,000,000 in 1923. In other words, assuming a static property, there would have been a gain of $23,400,000,000 in 1920, a loss of $6,300,000,000 in 1921, a further loss of $6,800,000,000 in 1922, and a gain of $3,000,000,000 in 1923. These huge 'profits' and 'losses' would have occurred without change in the railroad property used in the public service other than the theoretical and speculative change derived from shifting of general price levels. To put it still more graphically, by the application of the current reproduction cost doctrine the assumed base of $18,000,000,000 would have increased in 1920 by a sum greater than the present national debt, and the transportation burden upon the people of the country would have been correspondingly increased without the investment of a single dollar by those who would reap the benefits."

But evidently the Supreme Court is not to be frightened by mere figures when its constitutional obligation to protect private profits is at issue. Possibly the Court did not relish the tone of the Commission's report, nor the cavalier manner in which the Commission had overridden the long line of Court decisions. In comparing the Commission and the Court as to knowledge of the questions involved, Commissioner Eastman had said, "As to such matters it [The Interstate Commerce Commission] occupies a daily front seat upon the stage, while the Supreme Court of necessity is only an occasional visitor in the balcony." Even if one should accept Mr. Eastman's analysis, he would have to admit that the Court can stop the show.

In the opinion the Court, by a five to three decision, repudiated the work of the Commission because it did not "give consideration to current, or reproduction costs." However, the Court refused to say how much consideration or weight should be given to reproduction costs as compared with other factors, since, "that is not the matter before us." The only conclusion which can legitimately be drawn from the statement of the opinion is that reproduction costs must be actually reflected in the rate-base. However, the business interests of the country, the Interstate Commerce Commission, the lower courts and state commissions are apparently agreed that the Court implied that costs of reproduction at current prices must be the dominant factor. If this decision is allowed to stand, effective regulation of public utilities is at an end.

All this confusion, reflected in unintelligible and sometimes contradictory Supreme Court decisions and leading to nullification of all efforts at intelligent utility regulation, is fundamentally attributable to two errors of the Court, discernable in *Smyth v. Ames,* and increasingly apparent in subsequent cases.[17] The first was the use of the concept "value" in the consideration of a rate-base; and the second was the classification of utility property in the same category with private property. Value, as the Court is apparently using the term (and in the only sense in which it may legitimately be used in this connection), is power in exchange. Furthermore, the value of capital goods is fundamentally a resultant of the net income which may be derived from their

[17]Obviously if one wished to trace the implications of these two errors to their final resting place he would discover that they are one and the same.

employment, and the rate of return customarily expected on investments in such capital goods. The value of a public utility property, then, is a product of two factors: the amount of net earnings which may reasonably be expected from the operation of the business, and the rate of return customarily expected on investments of a like nature. But we are attempting to establish a base on which we may fix rates. These rates will obviously delimit earnings, which in turn will determine the value of the business. Hence to use that value as a rate base is to indulge in a puerile and nugatory mental somersault.

The inclusion of public utility property in the category with private property leads to the same sort of confusion. The obvious basis for including different things in the same category is that under like circumstances they tend to act in the same manner, which is another way of saying they possess the same characteristics. But public utility property, under government regulation of rates and services, does not act in the same way as private property without such regulation.[18]

This point would seem to be so obvious as to require no proof. Yet the Supreme Court in most of its opinions since 1886 has failed to recognize it. As a result, the Court, reasoning from false analogies, has floundered into all sorts of untenable positions. The economic characteristics of private property have been long and learnedly conned in an attempt to coin a formula for determining "present value" of public utility property. The "reasonable rate of return" has been judicially determined by references to the needs of private industry. Devices for calculating and providing reserves for depreciation, for measuring appreciation in land values, and for handling capitalization of reinvested surpluses have been borrowed bodily from the same source. The far more puzzling problems involved in evaluating public utility intangibles have been approached through the same logical process of mak-

[18]"In a private business extensions are made when the management estimates that they will be adequately profitable, and units are abandoned when they have ceased to earn. In a public utility the management may be required to extend services which are not profitable, and may be compelled to continue services which have ceased to produce any net income. In a private business a new competitor with more efficient technique may destroy all value of the older plant. Competition has no such power in the public utility field. In a private business competition of sellers in a more or less open market limits prices. No such function can be formed by competition in a regulated public utility.

ing comparisons with, and drawing conclusions from the procedure in private industry. Private industries possess property rights in "going concern" value, franchises, charters, easements, contracts, patents, deferred assets, water rights, taxes during construction, organization expenses, engineering and superintendence, trade-marks, and good will. They capitalize these things. Why should not the utilities do likewise?

If the Court in *Smyth v. Ames* had used some other term instead of the cabalistic "value"—say rate-base, or assessment—and had grasped in all its implications the basic distinctions between public utility property and private property it is just possible that an adequate system of government regulation might have evolved. Today it is becoming evident that regulation under the prevailing "law of the land" is a snare and a delusion—wholly unsatisfactory to all parties at issue. Instead of being continuous, positive, intelligent, and certain, it is notoriously sporadic, negative, unintelligent, and unpredictible.

In the first place, the very expensiveness of this sort of regulation makes it unworkable. Dr. E. C. Goddard reports that, "A single public utility in Chicago was valued as of May 1, 1918. In the public press the 'insides' of this valuation as bared before the utilities commission were said to show that the valuation, still under way, had already cost more than $1,000,000, and had reached the fifty-seventh half-morocco volume by way of report!"[19]

Dr. Goddard also recites some interesting facts[20] concerning the Second Consolidated Gas Case. "In 1921 the Supreme Court of the United States tells us that a master appointed in 1919 heard testimony from day to day for eight months taking over 20,000 printed pages—21 volumes—of records. For bringing all this into the record of the case the Court roundly scored counsel, and for any future indulgence in such practice threatened 'to punish to the limit of our discretion. . . .' The Supreme Court found that the master had been an expensive luxury. His bill, allowed in the lower court, ... was $118,000. This the Supreme Court ordered cut to not more than $49,250, a fairly costly employment for the 282 days the master served. The records in these cases had run to more than 35,000 pages."

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[19] "Fair Value of Public Utilities," *Michigan Law Review*, June, 1924.
[20] *Ibid.*

Dr. John H. Grey reports[21] the cost of the Des Moines Case as follows: "In the Des Moines Case the company imported sixteen expert witnesses from the East and compelled the taking of testimony for twelve months. Of these witnesses, the trial court said the lowest priced had $100.00 a day and expenses, while one of these witnesses stated under oath, in another case, that his regular price was $500.00 a day and expenses. I have it from the best of private authority that the company in this case spent $150,000 in the trial court alone. It took the city from . . . . December 27, 1910, to June 14, 1914, to get a favorable verdict from the Supreme Court of the United States. What the direct expense of the litigation to the city was, it is impossible to say."

Dr. Goddard remarks on the obvious fact that the testimony of such experts is "utterly unreliable" in estimating replacement costs. He concludes, "They [experts' estimates] are highly speculative and rest upon hypotheses that represent nothing that ever did or will actually exist. The wide variations in estimates by different appraisers well justify the remark of the Court in a recent case, '. . . . that each was not unmindful of his client's interest.' "

And of course these costs, whether assumed by the city or by the utility, ultimately must be paid by the citizens of the community. Legal costs are a legitimate part of the operating expenses of the utility and hence must be covered by rates to the consumer. The rates of a utility needs must be exorbitant or its services intolerable indeed to induce an intelligent city administration to assume the expense of such a cause, on the dubious chance of, "protecting the public interest." The learned Justice characterized one such proceeding as a "Travesty in which the winner was also the loser."

In fact, our regulatory venture has not adequately performed either of the functions outlined for it in *Smyth v. Ames,* namely, (1) to protect the public interest, and (2) to protect the investor in the public utility companies. In practically every case that has come up for adjudication the Supreme Court has emphasized the importance of adequately remunerating the investor for his sacrifices. But the Court (again caught in the mazes of analogy with private industry) has entirely ignored the vital fact that the great bulk of capital in public utility enterprises was contributed by

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[21]"Expert Testimony in Rate Valuation Cases," *Utilities Magazine,* January, 1916, p. 203.

bond-holders. It is impossible to say just what part of the total was contributed by these investors on a fixed-income basis. Mr. Justice Brandeis estimates it at about seventy-five per cent. This is probably very conservative.

The significance of this neglected item of information is readily discernible when we observe the effects of such a decision as that in the Indianapolis Water Case. According to the books of the company, the actual cost of the property was $10,434,254. Of this amount, $10,247,300 was represented by 4½ per cent bonds and 6 per cent preferred stock. The common stockholders apparently contributed the handsome sum of $186,954.

By employing a device known as "reproduction new, less depreciation, if any," by adding a sum of $2,300,000 for appreciation in land value and by a further addition of some $1,800,000 for certain not clearly defined items, the Court arrived at the astounding conclusion that a rate-base of less than $19,000,000 would be wholly unfair and unreasonable to the investor. Further, the Court intimated that this all-but-ravaged investor should be allowed a return of 7 per cent on his investment in order to recompense him for his risk, sacrifice, intelligence, ambition, initiative, business sagacity, and whatever other factors cause a person to embark his savings on such a hazardous venture.

By a judicious application of higher mathematics one might discover that 7 per cent on $19,000,000 equals $1,333,000. Further, since the bond and preferred stockholders will claim $524,383 as their just share, the common stockholder must get what meager satisfaction he may from the remaining $805,617—a paltry 430 percentum per annum on the money he actually invested in the plant!

Obviously the bond and preferred stockholders contributed the money actually in the plant, and they contributed it on a fixed income basis. They knew the rate of income they were to get, and made their investment on that information. The risk inherent in the venture was patently covered in the rate of return on their securities. Furthermore, these investors could not hope, by any exercise of a vivid imagination, to profit by the abra-ca-dabra of the Court. All "values" above actual capital invested, allowed by the Court, and all net incomes above the cost of such capital, are obviously the property of the common stockholder.

The two problems presented in *Smyth v. Ames* are still on the knees of the gods. Neither the interest of the investor nor the

interest of the consumer can be adequately protected so long as we have what Mr. Justice Brandeis characterizes as, "the wild uncertainties of the present method of fixing the rate-base." Using his words further, "To give to capital embarked in public utilities the protection guaranteed by the Constitution and to secure for the public reasonable rates, it is essential that the rate-base be definite, stable, and readily ascertainable."

In short, the public regulation of utilities is practically nullified by the fact that the Supreme Court has failed to recognize the difference between private industry and public utility industry. A number of ingenious schemes have recently been proposed for setting up a workable basis for government regulation. The minority report of Governor Roosevelt's Committee on Public Utilities, prepared by Professor J. C. Bonbright, of Columbia University, contains a novel suggestion. This report proposes that the State own all share-capital of the utilities. Most of the money invested in the plants would presumably be secured, as it is now, by the sale of bonds and, possibly, preferred stocks. But the private investor could only venture his funds on a fixed-income (presumably) non-risk-bearing, basis. If this did not entirely eliminate the problem of the rate-base, it would at least greatly alter the aspects of that problem. Likewise the questions involving good-will, charters and franchises, going concern, and other intangibles, as well as those involving land values and reinvested surpluses would lose their present significance. What the ultimate result of this would be no one can say.

Senator Howell, of Nebraska, has a bill before Congress which would, by Congressional action, make a legal rate-base for railroads. This would be the one determined by the Interstate Commerce Commission and repudiated by the Supreme Court in the O'Fallon Case. The results of this scheme are quite as problematical as those of Professor Bonbright. In due course of time the Supreme Court would have an opportunity to declare the act unconstitutional. The issue in such a case would seem to be the fundamental question as to whether Congress or the court shall declare the law of the land. If the Court allowed the Congressional Act to stand, the states might be expected to establish similar rate-bases for municipal utilities. It is to be hoped that Congress makes the experiment.

Dr. John Bauer, one of the most brilliant scholars in this field, proposes that a clear distinction be made between fixed-income

investments and risk-bearing investments; in other words, between bonds and stocks. Then he would allow the rate-base to fluctuate with the changing price level only in proportion to the amount of the total investment represented by stock contributions. To illustrate: suppose the property of a utility had cost $10,000,000, of which $2,000,000 had been contributed by stockholders and the other $8,000,000 by bond and note-holders. If the price level should rise 50 per cent, this would be reflected in an increase of $1,000,000 (50 per cent of the stockholders' $2,000,000 equity), and not by an increase of $5,000,000 as apparently is the case under a strict reproduction-cost scheme. The implication of this evidence is that the stockholder is taking the risk of changing price levels, while the bondholder is not (except in the sense that every bond holder does) and that the stock holder is only taking such risk on the money he invests, and certainly should not be allowed to profit—nor be forced to lose—on that contributed by the bondholder, as he does under the present arrangements. This scheme would at least prevent most of the fluctuations in the rate-base, due to changing price levels.

And, of course, the proponents of government ownership are becoming more vociferous. Their ranks are being constantly augmented. Only a few days ago Commissioner Eastman, probably the most profound scholar in America today in this field, presented a reasoned and powerful plea for public ownership of all basic utilities. Many other careful and conservative students of the subject are beginning to fear the utter collapse of our regulatory machinery. If this should come, then certainly the proposals for government ownership and operation will assume more serious proportions. At any rate, here is the politico-economic battleground of the immediate future.

IMPERIAL IDEAS AT THE FIRST CONTINENTAL CONGRESS

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With a rather human predilection for finality historians have generally accepted the view that the American Revolution was inevitable since the members of the first Continental Congress were committed to revolt from the outset. Possibly they have been too prone to agree with John Adams that the Revolution was over before the fighting began because it had already occurred in the minds and hearts of the men who were to lead it to a successful conclusion. It is proposed here to consider that generalization and to suggest that Adams, not uncharacteristically, was overstating the actual circumstances. While the task of assessing the thoughts of those men who were to make two nations grow where one had stood before is not a simple one, nevertheless a re-examination of such evidence as is available may be of some value in determining whether the Revolution was entirely the result of conscious political thinking, or whether certain undefined imponderables played an obscure but powerful role. It is not here suggested that ideas as such had no place but that their place was subordinate to emotions from within and a *pot-pourri* of factors from without.

The membership of the first Continental Congress was conspicuously mixed. Since the method of election varied in different colonies, some groups of representatives argued for more extreme policies than their fellows.[1] Again, the political and economic conditions of given colonies produced a tendency toward or away from conservatism. Class interests, too, had their influence. Consequently it may be remarked that the variations in point of view bulked rather larger than the similarities; the chief, if not the only, connecting link was the feeling that something must be done. What should be done, and how, were the dominating questions. Some members counselled petitions to Parliament, others an economic boycott, and still others open resistance. Notwithstanding the plenitude of suggestions it is well to remember that of the comparatively large number at the Congress only a small

[1]In some colonies representatives were chosen by the colonial assembly, in others by a special convention, and in others by a popular meeting.

proportion offered remedies. The majority, estimable men as they were, appear but the followers of the few who had definite ideas as to where they were going. On the other hand, if an analysis is made, however slightly, of the membership of the Congress, it becomes at once evident that several men were there largely because of what they had contributed to the controversy in the preceding decade. Only two men of first-rate importance, namely, Franklin and Jefferson, were missing, and both for good reason.

In considering the imperial ideas of these leaders of colonial opinion, for such they might well claim to be, it appears most convenient to group them with respect to the amount of self-government they demanded as rightfully belonging to the colonists. There were in general four main schools of thought, which may be summarized as those of self-taxation, home rule, federation, and commonwealth of nations. While it is not always easy to distinguish them and while, furthermore, students should guard against too simple and too modern a classification, the members of the Continental Congress fall naturally into one or another of these groups.

The first group, namely that of colonial self-taxation, can be quickly dismissed. Although that remedy of the imperial muddle had been most strenuously sought after for years, it had by 1774 ceased to attract the leaders of opinion. Despite the undoubted fact that most of the resolutions from colonial assemblies and the meetings of county and town freeholders argued for this central demand, few indeed would have been content with it alone. While there were men at Philadelphia who had limited their agitation to the particular right of self-taxation during the whole of the preceding decade, none of them offered that solution at the Congress.[2] It was generally realized that the divorcement of taxation and legislation had no practical validity.

On the other hand, the early home rulers formed an important and interesting group of imperial theorists, and included a number of the most respected members of the Congress.[3] They argued

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[2]Among these the most illustrious was Richard Henry Lee. In some *Resolves* which he wrote in June, 1774, taxation appeared the sole concern. *The Letters of Richard Henry Lee* (ed. J. C. Ballagh), vol. I, pp. 114–116.

[3]For a survey and an appreciation of earlier phases of this tendency see my "Colonial Claims to Home Rule, 1764–1775," *University of Missouri Studies*, Vol. II, No. 4 (1927). It is of value to note that the "Instructions"

constitutionally for the colonial right of control over internal polity as well as self-taxation, grounding their claims mainly on the charters and the English constitution, though not hesitating to appeal to that final and absolute norm, the law of nature. For more than ten years colonial publicists had been advocating this solution and the imminence of civil war brought no diminution of the plea. The first to outline this scheme was Richard Bland, a prominent Virginia lawyer, who in 1763, when discord was but a faint cloud, had submitted it as an antidote to further trouble.[4] Others at the Congress who had also recommended home rule during the years of fermentation were Stephen Hopkins,[5] John Dickinson,[6] Philip Livingston,[7] and perhaps even Samuel Adams[8]

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from the Virginia House of Burgesses to its delegates at the Congress contended merely for home rule, as did those of the Pennsylvania Assembly. Niles, *Principles and Acts*, p. 201, and note 6 *infra*.

[4]Although Bland's most distinguished contribution to the constitutional aspect of the dispute between England and the colonies was *An Inquiry into the Rights of the British Colonies* (1766), he had actually developed the same arguments three years before in *The Colonel Dismounted* (reprinted *William and Mary Quarterly*, Vol. XIX, pp. 31–41). The colonial legislature, he here said, has control over the internal government of the colonies; externally they are subject to Parliament. Well may L. G. Tyler claim precedence for the views of Bland over those of "James Otis, Samuel Adams, or any other pamphleteer or writer of his time." *Ibid.*, pp. 25–26. I find no evidence to indicate that Bland had changed his ideas by 1774.

[5]*Rights of the British Colonies Examined* (1764), Hopkins was still of the same mind in 1774. "Diary of Samuel Ward," *Magazine of American History*, Vol. I, p. 441. He also favored Galloway's plan. *Ibid.*, p. 442.

[6]*Essay on the Constitutional Power of Great Britain Over the Colonies in America* (1774). See also the "Resolves of the Committee from the Province of Pennsylvania," and the "Instructions of the Committee to the Representatives in the Pennsylvania Assembly." *Dickinson's Writings* (London, 1774). The burden of all these works was that parliamentary power over internal legislation in the colonies was illegal and unconstitutional. Earlier Dickinson had limited his claims to self-taxation. To all intents he never went beyond home rule, actually opposing independence in 1776. See also *The Works of John Adams* (ed. C. F. Adams), Vol. II, p. 379.

[7]*The Other Side of the Question* (1774). This while not a remarkable constitutional tract was almost unique in being tinged with wit. Livingston wrote, he said, to encourage the printer "who must be sadly out of pocket" by publishing the *Friendly Address* (1774) of the Tory Myles Cooper.

[8]The position of Samuel Adams is not easily described. While the "Instructions to the Representatives from Boston" and the answer of the Assembly to Governor Bernard at the time of the Stamp Act, for which Adams was mainly responsible, claimed for the colonists the right of making laws for their internal government, in the main he limited his pleas to self-taxation. *The Writings of Samuel Adams* (ed. Cushing), Vol. I, pp. 8, 17–18.

and Patrick Henry.[9]

The most effective advocate at Philadelphia, however, was none of these but rather James Duane of New York, who not only developed the solution from both a practical and a constitutional angle but actually anticipated some of the criticisms that could be charged against it. Furthermore, he did not stand alone. Indeed as one examines the debates of the Congress, he is more and more impressed with the conciliatory spirit and with the strong support accorded Duane in his pleas. The plan as presented by Duane before the "Committee to State the Rights of the Colonies" was grounded on the solid "Principles" of the British Constitution. It provided for "a firm Union between the Parent State and Her Colonies," a union under which the right of internal legislation and taxation was reserved to the colonies and that of regulating trade and the affairs of the whole empire to the British Parliament.[10] In considering some of the objections that might well be directed against this plan Duane maintained first of all that Great Britain had always exercised supreme power, and, secondly, that the argument so frequently made that Parliament

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[9]Henry wrote the famous Virginia Resolves of May 30, 1765, which announces the colonial right of self-government in internal matters. *Journals of the House of Burgesses, 1761–1765*, pp. 360ff. The example of Virginia was followed in 1765 by Rhode Island where Stephen Hopkins was governor, Connecticut and Maryland. The Virginia Resolves were not passed without bitter opposition; Peyton Randolph then Attorney-General of the province and later President of the Continental Congress offered five hundred guineas, "By God," for one vote to defeat these radical resolutions. Randolph evidently was concerned only with taxation. See for example his letter of May, 1768, *North Carolina Colonial Records*, Vol. VII, pp. 746ff.

Other evidences of a wide-spread belief in home rule can be found in the petition of the Pennsylvania Assembly to the Commons in 1768 *(Votes and Proceedings of the House of Representatives of Pennsylvania*, Vol. VI, p. 105); in the letters of Governor William Pitkin of Connecticut *(Letters of William S. Johnson to the Governors of Connecticut*, pp. 280, 286; in the petition of the Virginia Burgesses to the King in 1768 *(Journals, 1766–1769*, p. 165); and in the innumerable resolutions of Freeholders during 1774 (Force, *American Archives*, 4 ser., Vol. I, *passim.)*. It may also be recalled that certain of the Tories, notably Samuel Seabury, accepted this solution. *A View of the Controversy* (1774).

[10]Edmund C. Burnett, ed., *Letters of Members of the Continental Congress*, Vol. I, pp. 23ff., 38ff., 53.

might abuse its power could apply with equal justice to all governments.[11]

Among the supporters of this settlement in addition to those already mentioned were John Rutledge of South Carolina, who argued, basing his views on the common law and the charters, that the colonists were entitled "to a free and exclusive Power of Legislation *in all Cases of Taxation and Internal Policy*,"[12] Samuel Chase of Maryland,[13] Isaac Low of New York,[14] and John Sullivan of New Hampshire. The latter, who was credited by Joseph Galloway with having "thought solidly on the subject," actually composed a home rule resolution for the Congress which was afterward superseded by the more radical offering of John Adams.[15]

Closely allied in sentiment though quite diverse in theory was the plan of Galloway, which in some ways was a rather remarkable anticipation of the federation schemes of the later nineteenth century. The discredit which has attended Galloway because of his Toryism has sometimes caused students to forget that he was the one man who came to the Congress with a *solution* that was at once workable and well thought out. His plan was no mere shriek against one kind of injustice nor was it a medley of scattered suggestions as to what might be done. Rather it ranks as a new constitution for an organic empire. The scheme as outlined by its author both before Congress and in a pamphlet, *A Plan of a Proposed Union between Great Britain and the Colonies*, aroused many conflicting sentiments. The moderates and those

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[11] *Ibid.*, pp. 72ff., 77–78. He also appreciated the more important question, which most home rulers neglected, as to what were properly internal concerns. He did not, however, offer any solution. As to his attitude toward the historical power of Parliament in America, compare John Adams, *Works*, Vol. IV, pp. 47ff.

[12] Burnett, *op. cit.*, p. 44 and note.

[13] *Ibid.*, p. 63. "I am one of those who hold . . . that Parliament has a right . . . in some cases to regulate the trade, and in all cases where the good of the whole empire requires it." Duane did not qualify Parliament's power to regulate trade.

[14] Burnett, *op. cit.*, p. 64. Low was later thought a Tory.

[15] W. C. Ford, *Journals of the Continental Congress*, Vol. I, p. 67. Sullivan's resolution declared that "the power of making laws for ordering or regulating the internal polity of these Colonies" was vested in the provincial legislatures; and "that all statutes for ordering or regulating the internal polity of the said Colonies, or any of them in any manner or in any case whatsoever are illegal and void."

who were honestly seeking a *modus operandi* supported it; the radicals, to whom Galloway was the "arch-Tory," opposed it, in some cases very bitterly.[16]

The plan, it may be said, grew out of Galloway's realization that home rule stopped short of being a complete cure for imperial ills. Appreciating that control of internal legislation meant control over all legislation, he endeavored to find a way out of the labyrinth of imperial politics by the path of federation. Briefly, he resolved that while each colony might regulate its own local affairs, there should be "a British and American legislature for regulating the administration of the general affairs" of America.[17] He further argued on the basis of the constitution that the colonies should only be bound by those English laws which had been made before the founding of America, yet at the same time he was willing that Parliament should administer the government of the whole empire, including trade.[18]

The answer of the more radical group in Congress to this plan was the practical recommendation of a commonwealth of nations, but it is not at all likely that any of the advocates of such an organization had worked out any elaborate constitution comparable either to that of Galloway or to that of Duane. Summarized, this solution, of which John Adams and James Wilson were the most illustrious prophets, interpreted the relation of England and America to be that of England and Scotland before the Act of Union, that is, simply, by having a common king.[19] The Parlia-

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[16]Among those who supported it were Hopkins, Jay, Edward Rutledge, who hailed it "almost a perfect plan," and Duane. The chief opponents were Henry, J. Adams, Lynch and Ward. R. H. Lee thought he would have to consult his constituents.

[17]*A Plan of a Proposed Union* (New York, 1775), pp. 65–66; Burnett, *op. cit.*, pp. 54ff. For commentary on Galloway: E. H. Baldwin, "Joseph Galloway, the Loyalist Politician," *Pennsylvania Magazine of History and Biography*, Vol. XXVI.

[18]Burnett, *op. cit.*, pp. 22, 54. Another delegate, William Samuel Johnson of Connecticut, looked to a colonial union under a viceroy, and representatives from each colony over whose actions the king should have a veto. See his *Letters to the Governors of Connecticut*, pp. 258–259, and R. G. Adams, *Political Ideas of the American Revolution*, pp. 46–47.

[19]Although Wilson took no prominent part at the Congress, he had in *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament* formulated the idea of an empire linked only by the king. This tract, though not published until 1774, had been written in 1770.

ment of Britain would control the affairs of Great Britain, the colonial assemblies would control their local concerns, and the king would be king in America as he was king in Great Britain. The problems of the whole empire, John Adams conceded, might be regulated by the British Parliament, not, however, of right but merely of expediency.[20] And that was the final decision of the Congress, supported by a large number of men, some of whom had been conspicuous for their radicalism from an early day.[21] Despite the fact that the moderates argued their suggestions ably and constitutionally, they failed. Moderation, like Edith Cavell's patriotism, was not enough. Yet it should be remembered that clearly independent views were not expressed; in the first Continental Congress conciliation was the *summum bonum*.[22] At the meeting of the second Congress, however, the purpose had changed: the primary concern of everyone seems to have been the defense of the colonies, not the perpetuation of the empire, as had been the case earlier.[23]

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[20]*Journals of the Cont. Cong.*, Vol. I, pp. 68–69. This position, elaborated by Adams in his *Novanglus Letters* (1774–1775), had already been anticipated in the "Instructions to the Representatives of Boston" in June, 1768. Hutchinson, *History of the Province of Massachusetts Bay*, Vol. III, p. 490. Governor Bernard had seen evidence of this spirit in both 1765 and 1768. *Barrington-Bernard Correspondence*, pp. 96, 269ff. The *Suffolk Resolves* from Massachusetts which were vigorously at the Congress expressed the same extreme view. *Journals*, Vol. I, pp. 31ff.; Burnett, *op. cit.*, p. 37. See also C. H. McIlwain, *The American Revolution*, pp. 115ff.

[21]Chiefly Lynch and Gadsden of South Carolina, Ward of Rhode Island, and Patrick Henry. Burnett, *op. cit.*, pp. 71–72. Another defender of the same view was Roger Sherman of Connecticut who had refused to recognize parliamentary claims to supremacy over the colonies, having felt that men like Otis had surrendered the rights of the colonies. Burnett, *op. cit.*, p. 21; L. H. Boutell, *Life of Roger Sherman*, pp. 61–62.

[22]Gadsden, who at the Stamp Act Congress of 1765 had argued that the colonists must base their claims on their natural rights as men, appeared at times ready for a declaration of independence, as did Patrick Henry. Burnett, *op. cit.*, pp. 18, 30, 71. William Hooper of North Carolina likewise looked to independence. In a letter to James Iredell on April 26, 1774, he wrote: "With you I anticipate the important share which the Colonies must soon have in regulating the political balance. They are striding fast to independence, and ere long will build an empire upon the ruins of Great Britain." *North Carolina Colonial Records*, Vol. IX, pp. 983ff. See also pp. 1016–1017.

[23]See Duane's "Notes on the State of the Colonies," May, 1775. Burnett, *op. cit.*, pp. 98ff., and *Journals of the Cont. Cong.*, Vol. II, pp. 128ff., "Declaration on Taking Arms."

PARTY NOMINATIONS IN CALIFORNIA (1860–1909)

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The study of party methods in primaries and elections in California is valuable not only as a record of political life in itself, but also because it reveals phenomena which may be considered fairly representative of conditions in nearly all the states during a comparable period. Like other states seventy-five years ago, California left the conduct and control of nomination procedure in the hands of the party organizations, and even the general elections were not sufficiently safeguarded against fraud and manipulation. The inevitable result of this *laissez-faire* policy was the emergence of the "boss" and the "machine." The boss, bent upon strengthening and perpetuating his domination of the political scene, did not scruple to use whatever methods might be found necessary to secure his objective. Treating, bribery, intimidation, fraudulent registration, ballot-box stuffing, and other shady means were freely employed. Mere puppets were elected to public offices, both federal and state, while the strings of political action were adroitly pulled from behind the scenes. The appointive positions were filled with automatons obedient to the beck and call of the party manager. The source of real power was sought out by corporate and other business interests and a close alliance effected between them. Party considerations dominated private and personal affairs as well as the public business. In the process much money was gathered from those who had favors to ask, and distributed to those whose support was necessary to the continuance of the system. Decades passed while the apathy of the better citizens remained astounding. Indignation movements of an ephemeral sort were entirely ineffectual, usually losing force before the securely entrenched professional politicians had been routed. Yet it was out of this excess of wrong-doing that a better condition was to emerge. Conditions must become unbearable before an uninterested public will rise with sufficient strength and patience to throw out the rascals. By slow and halting steps the authority of the state was extended over the entire range of party activity. The realization gradually came upon the reform leaders that parties are not purely private organizations, but, while voluntary, are essentially public in their nature and functions. After a half-century of

experimentation with half-way measures, the movement for public control of parties culminated in the adoption of a direct primary law in 1909. Our present concern is not with the merits of this method of nomination. Certainly it has not proved a panacea for our political ills; more specifically, it has not dislodged the party organizations. It is difficult to prove whether the generally improved tone of our political life is due in some measure to the direct primary or entirely a result of other causes. In any event the adoption of a direct primary in 1909 came as a climax to a long struggle, intermittently waged, for the raising of party politics out of a mire of corruption. The resurgence of corruption in politics seems to be cyclical, but a glance at the past may reassure us that the secular trend has been upwards.

Early California elections are a reflection of rough frontier life. Success was the arbiter of right and wrong, and the methods used for carrying the day were crude in the extreme. There is very good evidence that in a San Francisco election of 1863, money was freely distributed to influence votes.[1] In 1864 the San Francisco Evening Bulletin expressed "grave doubt whether an honest election had ever been held in San Francisco."[2] Often disorder and violence occurred. Already many citizens were remaining away from elections because of the shameless way in which they were conducted. Ballot-box stuffing was already common,[3] and since the register was renewed only infrequently, personation was a crying abuse. Foreigners and recent immigrants voted in large numbers.[4] Party challengers were sometimes attacked for their vigilance, and fights occurred frequently. "Repeating" was engineered by gathering the "boys" in a saloon, plying them with liquor, and then driving them in wagons from one polling place to another.[5]

The ballots then used also opened the way for much fraud. Each party printed its own ticket, and no uniformity was

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[1]See Brief of Defendants, *The People of California on the Relation of the Central Pacific Railroad vs. H. P. Coon, Mayor, J. S. Paxson, Treasurer, H. M. Hole, Auditor, of San Francisco.* (1864).

[2]*San Francisco Evening Bulletin*, April 9, 1864.

[3]One purpose of the Vigilance Committee in 1856 had been to prevent this practice. L. H. Irvine, *A History of the New California* (1905) pp. 85–88 and p. 120.

[4]The *Sacramento Daily Union* of November 3, 1868, said: "Naturalization frauds were frequent throughout the state."

[5]The *S. F. Eve. Bulletin*, August 22, 1864.

required. The rigor of party discipline was enhanced by lack of secrecy in voting. It was not an uncommon practice to counterfeit the ballots of the opposing party, so that many would vote the wrong ticket by mistake.[6] On one occasion the Republican party printed a ballot so small and narrow that no scratching of names could take place. As there was no room for the substitution of other names, everyone must vote the ticket "straight," if at all.[7] In the Mare Island Navy Yard it appears that many votes were cast by soldiers and workingmen unqualified to vote.[8] The result of the above practices was that sometimes the vote in a district exceeded the total population resident there, including women and children. When ballot-box stuffing was thought necessary to win an election, a false bottom under which ballots were placed in advance, or a knot-hole in the back of the box served to expedite the process.[9]

As might be expected, the conduct of primaries was, if anything, even worse than that of elections.[10] Here there was no semblance of state regulation.[11] Conventions and caucuses were usually controlled by a small coterie of men. Fraud, illegal participation, purchase of votes, violence, "packed" conventions, and "snap" conventions were the order of the day. Party rule alone determined who might vote in a primary. In the Republican convention of 1867 the popular will was nullified and the machine triumphant, to the scandal of respectable men all over the state.[12]

At the same time, the effects upon the legislature of such practices at primaries and elections could hardly have been fortunate. All available evidence indicates that intrigue and fraud ran rife in the legislature. Large corporations especially found legislators willing and even anxious to do favors for a

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[6]F. A. Leach, *Recollections of a Newspaperman*, (1917) pp. 14–27.

[7]This was the celebrated "tape-worm ballot." G. H. Tinkham, *California Men and Events*, (1915) p. 256.

[8]Appendix to *Journal of the Assembly*, (1871).

[9]L. H. Irvine, *op. cit.*, p. 87.

A report from Gold Hill, September 9, 1864, said: "We had notorious ballot-box stuffing in our midst."

[10]"For the last week battalions of blowers and strikers from San Francisco, Sacramento, and San Quentin have been detailed here to operate at the primaries." *Placerville Mirror*, July, 1865, p. 214.

[11]The *Sacramento Daily Union*, November 13, 1868, said: "The party system is bad enough, but combined with the convention system, it is enough to ruin any country."

[12]G. H. Tinkham, *op. cit.*, pp. 247–251.

consideration. If this were not enough, social or economic pressure might suffice to bring the legislator to his senses.[13] Public condemnation of legislatures was universal. One such body was called the "legislature of a thousand steals"; another, "the legislature of a thousand drinks."[14] It is no wonder that the end of a legislative session was hailed with a "sigh of relief."[15] The close connection already apparent between the Central Pacific railroad and the State government, as well as the National Congress, added to the uneasiness of the people.[16] Later on the spectacle of a president of the railroad occupying the governorship of California would have created widespread dismay; in the sixties, criticism was confined to a very few. When the same man, Leland Stanford, became United States Senator from California, in 1885, public rage reached a fever pitch.

It seems impossible to believe that favors were not distributed freely to the legislators of the sixties, although definite proof is difficult to obtain.[17] The main point of importance here is, however, that people generally believed venality existed, and the belief contributed as much to the public feeling as though full proof were at hand. In the Senatorial election of 1868 it was widely reported that party leaders provided plenty of cigars and liquor, if not more potent arguments, to convince the legislature of the wisdom of their choice of a candidate.[18] Their success in the affair contributed to the agitation for direct election of Senators, although the reform was long in coming.[19]

Agitation for reform of primary and election procedure gathered some force after 1860. Peoples Nominating Committees were formed, dissolved, and frequently revived, in several cities to offset the operations of the machine.[20] A "Taxpayers Protective Union" was created in 1861 to watch over the legislature, and guard the public treasury. People were urged to turn out

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[13]R. G. Cleland, *A History of California, the American Period.* (1922) V. 4, p. 409.

[14]*Ibid.*, V. 4, p. 343. In the latter case T. N. Greene moved the body adjourn to take a thousand drinks.

[15]*S. F. Chronicle*, March 16, 1872.

[16]*Sacramento Daily Union*, November 26, December 26, December 31, 1868.

[17]In 1863, seven acts passed the legislature in support of the Railroad.

[18]"Bribery; or the California Senatorial Election. A Comedy in Three Acts." S. F. 1868.

[19]The legislature passed a resolution favoring direct election of Senators, February 23, 1872.

[20]*S. F. Eve. Bulletin*, April 9, 1864.

to primaries, for "therein lay the root of all political abuses and the remedy as well."[21] The legislature was deluged with proposals for reform of primaries and elections. As a result several measures were passed. In an effort to divorce the election of judicial officers and the Superintendent of Public Instruction from the evils of partisan politics a separate election was provided for them by a law of 1863. The act seems not to have fully accomplished its purpose, however, for Governor Low advocated its repeal in 1867.[22] In 1864 the general election law was amended to provide preliminary examination on oath of persons whose right to vote was challenged. The penalty for perjury was prescribed for the offense of procuring anyone to swear falsely.[23]

In a law of 1866 the first real advance was made in the regulation of primaries. The purpose of the law was that of "protecting the elections of voluntary political associations, and to punish frauds therein." The law was well drawn, and served as a model for similar legislation in other states, but a serious defect was its purely voluntary application.[24] Parties might accept the law or refuse to do so at their option. But it did give legal recognition to the existence of parties, and thus opened the way for more effective legislation later on. Some of the worst abuses of nomination procedure were regulated. The "call" for a primary must be published in advance, and must include a statement of whether or not the primary was to be held under the provisions of the primary law, the time and place of the meeting, and the authority under which the call was issued. Other sections provided for a supervisor of the primary, who was made accountable for the conduct of the meeting, and a statement of the vote cast. Ample provision was made for the punishment of fraud and illegal voting. On the whole, it was one of the best primary laws to be found in any state for some years.[25] As to elections, a law of the same year provided severe penalties for illegal voting and similar abuses in regular and special elections. Finally, in 1872, a uni-

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[21]*S. F. Eve. Bulletin*, August 16, 1864.

"Report of the Executive Committee of the Taxpayers Protective Union, August 14, 1861," *Pamphlets on San Francisco*, V. 10.

[22]*Journal of the Senate*, 15th session, p. 47.

[23]California Statutes, 1864. Ch. CCCCXIII.

[24]California Statutes, 1866, Ch. CCCLIX.

[25]The *Sacramento Union*, March 2, 1867, said: "The law is timely and wise, and promises quiet elections, security in polling legal votes, immunity from ballot stuffing—and the Union Ticket."

form ballot in elections was required of all parties. Party organizations were still to print the ballots, but must secure the paper on which they were to be printed from the state government; a definite size was prescribed for all party ballots.[26]

It would be a serious mistake to think that the passage of such legislation would of itself prevent the evils incident to primaries and elections. As time passed the old abuses continued, but a lethargic public raised its head only infrequently to attempt to throw off party shackles. A few incidents in the period from 1870 to the adoption of the direct primary in 1909 will serve to give a picture of the conditions out of which more effective legislation eventually proceeded. The first decade of this period was one of protest and recrimination, much of which was directed at the Central Pacific railroad. This company held a position in the public affairs of the state unexampled before or since in the history of the state. Rightly or wrongly, its managers were accused of every sort of political manipulation and corruption of all descriptions. The railroad became a convenient target on which might be directed the abuse which became so popular with those who, in helpless rage, saw the affairs of the commonwealth become the plaything of a selfish oligarchy. Each political party accused the other of subserviency to the "corporations," while people generally believed neither of them to be free of their control.[27] Party planks condemned the "selfish interests," new independent parties were formed. The "Peoples Independent Party" in 1873 condemned the "abominable and infamous practice of securing election to office by the corrupt use of money at the polls and in bribing members of the legislative bodies."[28] In 1873, the Republican Governor, Newton Booth, declared that the state was controlled by the "machine," while the Democrats professed themselves the "real enemies" of monopoly.[29] The Granges were becoming powerful and denounced the railroad in violent terms. The Vacaville Grange declared its purpose to be the defeat of "scheming corporations."[30] Some results of the

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[26]California Statutes, 1866, Ch. CCCCIX. Political Code of California, March 12, 1872. Secs. 1357–1365.

[27]W. J. Davis, *A History of Political Conventions in California.* (1893) p. 322.

[28]The *Jolly Giant*, August 1, 1875. See also platforms of the Peoples Independent Party, September 25, 1873, and June 22, 1875.

[29]W. J. Davis, *Political Conventions*, pp. 295–312; 323–331.

[30]Z. S. Eldredge, *History of California*, V. 4., p. 342.

agitation are to be found in primary and election legislation.[31] The ballot law of 1872 was revised in 1874, and many of the safeguards surrounding general elections were extended to primaries, but the laws applying to primaries were still optional. Attempts to restrict the operations of corporations were many, but largely futile.[32] The upshot of the situation was the calling of a state convention to amend the state constitution. In the Convention the Granges, independent associations, and the Workingmen's Party of California, joined in denouncing their common enemy, and succeeded in having placed in the new constitution several articles the intent of which was hostile to corporations.[33] Some of these were later declared invalid by the courts.[34] A few provisions aimed to correct outstanding political abuses. Special laws on elections and primaries must not be passed, lobbying in the legislature was prohibited, and bribery made punishable by disqualification from ever holding office in the state. Despite a revulsion of feeling against the constitution, it was accepted by popular vote and became effective January 1, 1880.[35]

The radicalism of the seventies gave way before a reaction during the next two decades. Direct evidence exists of activity on the part of the railroad in politics, and corruption seems undoubtedly to have been one of its tools.[36] A powerful lobby was still maintained at the legislature. E. T. Bledsoe stated that while Chairman of the Committee on Elections, he was often given intimations that he might enrich himself if he wish to do

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[31]Political Code. (1874) p. 74. Act of March 26, 1874. *Ibid.*, secs. 1357ff. Amendments to the Codes. (1874) p. 24. C. E. Merriam. *Primary Elections*, p. 16.

[32]California Statutes. (1874) p. 916–932. Also Ch. XXVI and *Ibid.*, (1876) Ch. DXV.

[33]The Workingmen's Party was sometimes called the "Sand-Lot" party; Denis Kearney was for a time its president. *California Constitutional Convention, Debates and Proceedings.* V. 1, p. 84. Mr. V. E. Howard said: "Heretofore the managers of the Railroads have controlled the political organizations and conventions of both parties—the Central Pacific has fallen in with that policy; elects their man and sends him to Washington with a collar around his neck on which is inscribed—'Central Pacific'."

[34]*In re Parrot*, 6 Sawy. 349, I Fed. 481; *Houghton v. Austin*, 47 Cal. 646.

[35]*S. F. Eve. Bulletin*, April 9, 1879.

[36]Brief of Complainant, *Stanford et al v. Colton*, especially letter No. 261, March 14, 1877. *San Francisco Daily Report*, November, 1892, *et seq.* These articles are the well-known "Dear Pard" letters. *Pacific Railroad Commission Report* (1887–1888) V. 7, p. 3697–3789. *Pamphlets on California*, V. 8, No. 14, W. F. White.

"right." On one occasion he was offered "three hundred and fifty good reasons" for voting in favor of a bill. Several members of the legislature were indicted for bribery.[37] The charges of venality even extended to the courts.[38] However, it appears that conditions in elections and primaries had improved somewhat, although J. D. Phelan reported having seen bribery in San Francisco elections in the late eighties.[39] But parties and elections were normally under the control of bosses whose command was autocratic. The Democratic boss of San Francisco was indicted for bribery in 1891. One corporation was reported to have paid him $400 monthly besides large sums at election time. The San Francisco Board of Supervisors was not above suspicion, one group being known as the "solid nine" for their joint work on "jobs."[40] In self-defense against these deplorable conditions citizens in several cities organized themselves to combat the machine and its corrupt methods. An anti-monopoly party was created. In Oakland a Central Citizens Committee was formed to combat the machine, and feeling in many parts of the state became bitter against corporate wealth.[41] Much of the agitation familiar twenty years earlier was revived. Economic distress lent bitterness to the situation. Still, no important legislation affecting primaries or elections was passed during the decade from 1880 to 1890.[42]

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[37]The San Francisco *Wasp*, March 14, 1885; *San Francisco Chronicle*, March 12, 1891; *Ibid.*, October 1, to November 15, 1891.

[38]*San Francisco Chronicle*, April 18, 1885. Colton letter No. 105; *Resolutions of a Mass Meeting of Citizens of San Francisco*, June 19, 1894. *Pamphlets on California Biography*, V. 4, No. 4; *The Fresno Democrat*, April 24, 1885.

[39]Circular of the Young Men's Democratic League, January, 1889, in *Pamphlets on San Francisco*, V. 5, No. 7. Glass ballot boxes helped prevent ballot-box stuffing.

[40]The *Wasp*, October 28, 1882; *San Francisco Chronicle*, November 11, 1891; *Ibid.*, December 24, 1891.

[41]"Address of the Citizens League," E. R. Taylor, Chairman, September 28, 1888. *Pamphlets on San Francisco*, V. 10, No. 6; *Pamphlets on Oakland*, V. 10, No. 1; *Pamphlets on S. F.*, V. 15, No. 5.

[42]The *Wasp*. February 10, 1882. "It is in the nomination of candidates that the Railroad corruption fund and its paid bribers and wire-pullers have their field and earn their wages." The primary, it said, "is more important than the election." A severe indictment of the railroad is found in *Pamphlets on Pacific Railroads*, V. 5, No. 18.

The passage of an Australian Ballot law in 1891 opened the way for more extensive regulation of primaries.[43] The act defined a party as an organization which polled 3 per cent of the vote at the last state election. Any party might hold a convention to nominate state officers. Certificates of nomination were to be signed by the chairman and the secretary of a convention, and filed with the Secretary of State, or with local officials, in the case of nominees for local positions. Nomination by means of a 5 per cent petition was also provided.[44] Other sections dealt with the secrecy of the ballot, cards of instruction for illiterates, and the administrative arrangements for elections. Closely following upon this law of 1891, in 1893 election expenditures were regulated, and the punishment for bribery in conventions, legislatures, caucuses, and primaries was defined. The provisions of the law relating to the use of money in elections were later held not to apply to primaries where delegates were elected to conventions.[45]

Between 1895 and 1900 a veritable comedy of errors was enacted. In 1895 the legislature passed a primary law. It provided definitions of state, district, and local conventions, required all party primaries to be held at the same time and place, prescribed the form of ballot to be used, declared the expense of the primary to be a public charge, regulated the apportionment of convention delegates, and in general applied the same rules to primaries as were set out for regular elections. Independent candidates might be nominated by a petition of 3 per cent of the qualified voters.[46] However, only two counties were included within the terms of the law, and in 1896 it was declared unconstitutional on the ground that it was "local and special" legislation, and therefore in contravention of Article IV of the State Constitution.[47] Then, in rapid succession, two more primary laws were passed, in 1897 and in 1899, and as rapidly declared unconstitutional by the courts.[48]

The 1897 law was similar to that of 1895, but was made applicable throughout the state. It was the first attempt at a statewide mandatory primary law. A party test was, however, added,

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[43]California Statutes. (1891) Ch. CXXX, p. 165. Also *Ibid.*, (1893) Ch. XVI.

[44]Changed to 3% in Statutes of 1893. Ch. CCXX, Sec. 2.

[45]Statutes, 1893, Ch. XVI. *People v. Cavanaugh*, 112 Cal. 674.

[46]Statutes, 1895, Ch. CLXXI, p. 207.

[47]*March v. Hanley*, 43 Pacific Reporter 975.

[48]Statutes of 1897. Ch. CVI, p. 115. Statutes of 1899. Ch. XLVI, p. 48.

requiring the voter to declare his bona fide intention to support the candidates of the party in whose primary he participated. The corrupt practices provisions relating to elections were extended to primaries. These provisions proved unfortunate, for the act was invalidated by a decision of the court in 1899, mainly because of the party test, but also, in part, because the law included more than one subject.[49]

The act of 1899 met with a similar rebuff, but for a different reason. In this case the law was voided because it had no party test. The state Supreme Court declared that the absence of a party test left a party open to invasion by its opponents, and thus obstructed the right of free association. It was also held that the requirement that a party must have cast 3 per cent of the total vote at the last state election, as a qualification for nominating candidates, was unjust to small groups. Therefore the law was found contrary to both the state and the federal constitution.[50] This farcical procedure resulted in the adoption, in 1900, of a constitutional amendment which authorized the state legislature to pass primary laws, local or general, optional or mandatory, to impose a party test, and to define parties according to a ratio of the total vote.

In pursuance of the amendment several acts regulating primaries were passed during the next decade, culminating in the direct primary law of 1909, which, as later amended, remains effective at the present time. In 1901, amendments to the penal code established more severe penalties for crimes committed in elections and primaries.[51] Later the same year a new primary law replacing that of 1899 was enacted. Its provisions differed only slightly from those of the earlier laws, although they are more detailed and exhaustive. The party test, independent nominations, and the 3 per cent definition of parties were included. The primary became virtually a preliminary election, subject to nearly the same rules as general elections. The law was made mandatory only in cities of over 7,500 population; elsewhere it was voluntary. In 1903, 1905, and 1907 further acts contained

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[49]*Spier v. Baker*, 52 Pacific Reporter 659. It was the opinion of the court that a party test violated Article 20, Section 11 of the State Constitution by imposing an additional qualification for voting.

[50]*Britton v. Board of Election Commissioners*, 61 Pacific Reporter 1115.

[51]Statutes of 1901. Ch. CLVII, Sec. 6–27, p. 436ff.

alterations or additions of a less important character in the political and penal codes, and in the administration of the primaries.[52]

Meanwhile the storm was gathering which was to sweep the Progressives into power. In the early years of the twentieth century conditions in primaries and elections were undoubtedly much more satisfactory than at earlier times, but the same cannot be said of other phases of political activity.[53] The railroad had declared, but had not effected, its retirement from politics. Public utility corporations, brothels, gamblers, and all who needed protection from the law, sought and obtained it from the party organizations which still controlled practically all public bodies in some areas.[54]

The prostitution of local government to the solicitations of private interests appears most clearly in San Francisco, and was brought forcibly to public attention in the graft prosecutions which began there in 1906.[55] Without reviewing the details of the cases, it may be sufficient to mention that, after promise of immunity, seventeen of the eighteen Supervisors of San Francisco admitted accepting bribes, Abraham Ruef was sentenced to prison, and the Mayor of the City escaped by a decision of a higher court. Several others associated with public utility interests were indicted for bribery, but their cases dropped after the enthusiasm for the prosecution had spent itself.

Contemporary evidence indicates that politics was none too pure in elections and primaries, and in the legislature, as well as in the city government of San Francisco. Everything considered, conditions were favorable for a reform movement.[56] It made its appearance when the Lincoln-Roosevelt League was formed, and finally succeeded, in 1910, in electing its candidate, Hiram Johnson, governor of the state. On a program of progressive meas-

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[52]Statutes of 1901, p. 606 *et seq.* Statutes of 1903, Ch. XLIV, p. 49; Ch. CVI, p. 118. Statutes of 1905, Ch. CLXXIX, p. 173; Ch. CCCLXVI, p. 441; Ch. CDLXXXVIII, p. 650. Statutes of 1907, Ch. 340, p. 641; Ch. 345, p. 652; Ch. 352, p. 677.

[53]But see, "The Lincoln-Roosevelt Movement in California"; *The Arena*, V. 40, November, 1908. J. D. Works.

[54]*San Francisco Call*, July 4, 1908; *The Outlook*, V. 100, February 19, 1912.

[55]F. Hichborn. *The System.* (1915) p. 17; T. H. Bonnet. *The Regenerators.* (1911) p. 15; F. Older. *My Own Story.* Ch. 34.

[56]*The S. F. Star*, March 16, 1907; July 11, 1908; *The California Weekly*, December 4, 1908; C. E. Russell, *Stories of Great Railroads*, pp. 164–165; *Hampton's Magazine*, September, 1910.

ures, such as the direct election of senators, the initiative, referedum, and recall, and the direct primary, the League waged successful war on the existing evils of party politics. In its campaign it was materially assisted by organizations such as the Direct Legislation League, the Good Government League, the Direct Primary League, and others of like character. Progressive papers also gave it their support.[57]

As a result, the legislature of 1909 was found to contain a majority of the forces of reform. Although the regular party organization, by superior tactics, succeeded in electing the speaker, the reform element mustered sufficient strength to pass the first California law establishing direct primary nominations.[58] This law became the basis for all direct primary legislation subsequently passed in the state, and also served as a guide for the legislation of other states.

The law provided that all candidates for elective public offices must be nominated by direct vote at primary elections, or by nominating petitions signed and filed in accordance with law. The ballot was to contain the candidates of the party for United States Senator, but the result of the vote was to be only advisory.[59] Nomination papers for state and national officers must be sent to the Secretary of State, accompanied by a fee of $50.00. The regulations governing nomination papers and fees of candidates for local offices were also prescribed. In the case of candidates for state and federal offices, nominating petitions were required to be signed by 1 per cent of the party voters. Independent nominations could be made as under previous law, but no candidate defeated at a party primary might become a candidate at the general election by means of such nomination.

The conventions were not entirely abolished, but might still exist for the purpose of framing the party platform and transacting the business of the party. State conventions were to be chosen by county conventions, which, in turn, were to be elected in the August primaries. District and local conventions might also be held. Other provisions described the ballots to be used in primaries, fixed the amount of legal campaign expenditures, requir-

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[57]Cf the *Fresno Republican, the S. F. Star,* the *L. A. Morning Tribune,* the *Sacramento Bee,* the *S. F. Call,* the *S. F. Bulletin,* and the *California Weekly.*

[58]Statutes of 1909, Ch. 405, p. 591. F. Hichborn. *The Story of the California Legislature of 1909.* (1909).

[59]It was made binding on the legislature in 1911.

ing a statement to be filed by each candidate within 28 days after the primary, and extended all the provisions relating to corrupt practices in general elections to be primary elections.[60]

Thus, by a long and tortuous process, was party control placed in the hands of the people. The convention system of nomination, which replaced the legislative caucus in many states during the thirties and forties of the nineteenth century, was hailed with joy as a device which would insure democratic control of party affairs. The outcome was quite different from the anticipation, for the system lent itself easily to the domination of a small group of party men. Three-quarters of a century after its inception, the effort to escape the evils of the convention system led several states, including California, to adopt the direct primary as a means of nominating candidates. Again the promised reward was a restitution of government and party to the people. But no mere mechanical change can secure to the great body of citizens control over public affairs, unless they are able and willing to take an active and interested part in politics. The direct primary has not put the people in active possession of the conduct of party affairs, nor can it do so, but if and when they do see fit to assert themselves, it may make the party more immediately responsive to their demands.

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[60]Modifications of the primary law have since been made at practically every session of the legislature since 1909.

BOOK REVIEWS

EDITED BY O. DOUGLAS WEEKS
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Stocking, George Ward. *The Potash Industry: a Study in State Control.* (New York: Richard R. Smith, Inc., 1931, pp. vii, 343.)

Students of the economics of the potash, coal, or oil industry cannot afford to overlook this book. Scholarly in treatment, and interestingly written, the economic viewpoint predominates,—the reader is not confused by masses of technical details.

Cameralism (German mercantilism with special reference to the revenue of the prince) and its institutional accompaniments, developed early in the history of German economic thought, and their existence well into the twentieth century brought about the close relationship between state and industry so characteristic of Germany. In the middle of the nineteenth century potash was a state monopoly. But new deposits were discovered, and private companies began production. Large profits and the chance of speculative gains attracted private capital in abundance. Soon prices were reduced, profits disappeared, and bankruptcies were frequent. The state stepped in, and under its protective wing a potash cartel (syndicate) was formed. A central sales organization set prices at levels supposed to yield profits to the enterprisers, and at the same time allow the German farmer to take advantage of cheap fertilizer at the expense of the foreign consumer. For a while the scheme worked; somewhat haltingly, to be sure. The greatest difficulty seemed to be that the high profits called forth a constantly increasing production, or, rather, the capacity to produce was constantly increased.

Since the Great War the German monopoly has been broken. The French have the Alsace mines, and production looks promising in the Permian Salt Basin of Texas and New Mexico. Meanwhile, in Germany the cartel is gone, and large individual corporations (the so-called trustification movement), have been formed by the consolidation of many small companies.

Decreasing costs (at any particular time), inelastic demand, and specialized and fixed capital are economic characteristics of the industry. Dr. Stocking points out that potash mining is highly speculative. He deduces and advances illustrations drawn from German experience to show that uncontrolled competition is undesirable. Unified guidance of the industry is necessary: first, to eliminate waste, and secondly, to protect legitimate investment. The cartel form of control is not satisfactory; increasing capacity to produce plagued the German Syndicate throughout its existence, while the consumer paid for the inefficiencies of the system. Large corporations, competing with one another, have been allowed to develop under the socialization program of the German Republic, and but little unified guidance has been given the industry.

We may agree with Dr. Stocking's conclusions, and yet venture a suggestion. German experience seems hardly broad enough to premise inelasticity of demand for potash. The abortive effort of *Wintershall* to capture the market by reducing prices cannot be taken as conclusive. Also, if the

depreciation account for capital equipment and the depletion account for the mineral content of mines are treated separately in theory and in practice, the state might find a way to prevent unrestrained exploitation of mineral natural resources.

FREDERICK LYNNE RYAN.

University of Oklahoma.

Morris, Richard B., *Studies in the History of American Law.* (New York: Columbia University Press, 1930, pp. 285.)

In these brief studies, the writer considers first certain major influences that gave character and complexion presumably to the whole body of Colonial American law, then selects as representative and for particular study the seventeenth and eighteenth century laws governing the alienation and devolution of land, those concerning the rights of married women, and those fixing responsibility for tortious acts. Among the major influences, frontier life takes a prominent place, all the more prominent for the scarcity of professional lawyers whose inclination would have been to apply English precedents. By reason of the same scarcity of common-law lawyers and common-law literature, combined with the novel conditions of a new world, conceptions of natural right and of divine law find readier expression, these conceptions translating themselves into what to the practical frontier mind seems a just and reasonable disposition of the matter at hand.

The general impression which the author seems to this reviewer to expect that the reader shall get from his assembling of particulars is that the early colonial courts took long strides in simplifying the law and in suiting it to the novelty of colonial conditions, partly because, being ignorant of what the English common-law was, they applied instead untutored nations of justice and a rugged common sense, and partly because even where they knew the common law they were disposed to brush away the archaic accumulations from the practice of generations of technicians in English courts; that with the 18th century there came a propertied class and a legal profession and with these an increasing resort to English law applied in the English way. With these there inevitably came also conservatism and in some measure, it would appear, greater consistency.

In the more detailed studies the reader is shown as results of the earlier influences, in the field of real property, inroads upon primogeniture and estates tail; in the law of persons, limitations on the common law incapacities of coverture; and in the field of torts, a measurable expansion of the doctrine of non-liability without fault. Results appear also in matters of evidence and procedure. The English system of real actions, for example, was practically divested of the cumbersome appendages of "aid prayers, vouchers, protections, parol demurrers, and essoins."

These conclusions, both in the general and in the particular fields, seem plausible. They are not only consistent with one's prepossessions, but they seem also to be reasonable implications from the raw material which Dr. Morris has assembled. One may not trust too implicitly, however, either to prepossessions or to plausibility. Neither may one trust too implicitly to the consistency of implications with the raw materials from which they are derived. In another recent study in legal history which this

writer was asked to review the author undertook in 250 pages to reproduce the salient features of the system of contract law as applied in the local courts of Mediaeval England, with materials drawn here and there from a period of nearly 900 years, some from the records of the borough courts, some from the merchants courts, some from the courts baron, and some from the general eyres. The fragments thus remotely derived were synthesized into more or less of a system and the inference drawn that this system was the law applied in the county and hundred courts, the local courts proper, for which there were no records. Perhaps legal history in its more obscure corners can rest on no more secure foundation. The studies here under review fill only a very small book (273 pp.) of which the detailed material on particular subjects covers only a part (190 pp.). The territory covered is 13 colonies, each deciding cases in its own way, and the time is two centuries. The validity of the implications must therefore depend ultimately on whether the raw material is *typical* and whether it is typical is a matter which of necessity rests with the historian who alone has covered the field. As to the significance of the time element, one needs only to refer to the broad changes that have taken place in American law during a single generation just past to realize the great caution with which one must cite a case decided in one century for the law in the century which follows. And as to the territorial element, the bewildering variety which exists at present in the various states on particular subjects would teach caution in citing a case in one of the colonies as an application of "colonial law."

The need for such caution is all the more obvious when one recalls that the present diversity exists despite a century and a half under a common constitution, despite the greater recourse to an English common law background which as Dr. Morris notes began even before the end of the colonial period, despite recent "Uniform State Laws," and despite the revolution which has taken place in interstate transportation, contact, and intercourse; all of which influences would seem to make for greater uniformity and consistency and none of which, save in some degree the second, was at work in colonial times.

BRYANT SMITH.

The University of Texas.

Hale, Oron James, *Germany and the Diplomatic Revolution: A Study in Diplomacy and the Press, 1904–1906.* (Philadelphia: University of Pennsylvania Press, 1931, pp. 233.)

The diplomatic history of the period immediately preceding the World War has been written and rewritten many times in recent years. On the whole it has been based upon the correspondence and the state papers of the diplomats and the officials of the various countries of Europe and has taken little or no account of the views and opinions of those who held no official positions but were nevertheless men of great influence in public affairs. As a result we have seen only what was going on in front in the various diplomatic situations as they have developed from time to time—the back stage action has been left out of the picture.

The book under review is an attempt to get below the surface of things, to change the figure of speech, by way of tracing "the part played by

the European press in creating international friendships and intensifying national antipathies." It is largely confined, however, to a very brief period of time, namely the years 1904–1906. These two years concluded an eight year period when the relations of the European powers underwent so complete a transformation as to amount to a diplomatic revolution. Among other things that happened during those eight years may be noted the Anglo-Japanese Alliance, the Entente Cordiale between England and France, the preliminaries to a similar entente between England and Russia, and the estrangement of England and Germany. The last named topic constitutes the main theme developed by the author.

The first three chapters are introductory in character. The first discusses in a general way the press as an institution of foreign policy and in particular the characteristics of the English, the French, and the German press; the second gives an account of the agitation over the naval rivalry between England and Germany; and the third tells of the scare that arose in Germany in November and December, 1904, to the effect that she was in immediate danger of an English attack. The remaining chapters are devoted to the Moroccan question in its various phases from the time England and France entered into an agreement concerning the matter in April, 1904 down to the collapse of Germany's policy in October, 1905, the outcome of which was the reversal of the friendly relations that had long existed between England and Germany.

The part of the English, the French, and the German press in bringing about this outcome is by no means a creditable one. Captious criticism and willful misrepresentation were indulged in on all sides, and, instead of being a steadying influence, the press became a powerful means of propaganda, much of which was directly inspired by those high in political authority.

Most of the book is very readable, but there are places where the subject matter is very much jumbled and hence confusing to the reader. This could have been obviated in part at least by a rearrangement of certain paragraphs and by slight amplifications here and there. There is a curious omission in chapter seven of any discussion of the Conference of Portsmouth, as suggested by the chapter heading. Not more than one sentence of less than three lines is devoted to that matter, and that one sentence is embodied in a paragraph on another topic. Chapter *VI* on *Henckel von Donnersmarck and the Gaulois Interview*, which proves that the three column, front-page article that appeared in the *Gaulois* on January 17, 1905, as an interview with Prince von Donnersmarck was a clever fabrication, is a fine piece of historical criticism. The notations upon the various German, French and English newspapers, listed among the sources in the appendix, are very enlightening. One could wish that the author had enlarged upon these notations and made them the basis of a chapter in his book.

E. M. Violette.

Louisiana State University.

Spahr, Walter Earl, and Swenson, Rinehart John, *Methods and Status of Scientific Research*. (New York: Harpers, 1930, pp. xxi, 533.)

To the large and growing volume of works on methodology, most of them of recent vintage, must now be added the subject of the present

review. Its authors, however, disclaim any intention to disclose new truths, but design only to write a book, in their own words, for the use of "the beginner in research, particularly for college seniors and for those who are expecting to engage in research leading to the Master and Doctorate degrees in the social science fields" (p. v). Their task is therefore, as they see it, three-fold: (1) to elucidate the principles of critical scholarship generally accepted (not to discover new ones); (2) to describe the technique which may be most advantageously used in applying these principles; and (3) to set forth the status of research today in the social sciences (p. v). Their purpose, in short, is to provide the prospective and the inexperienced investigator with such facts as will enable him to obtain a grasp of the chief problems which will confront him in the field of research.

In the pursuit of this end the authors have written eighteen chapters, whose subjects cover a very broad range of problems connected with the discovery and setting down of new truths. They include, among others, discussions of the implications of the scientific method in research, the scholar and his attitude, the evaluation of materials gathered, the methods of collecting data, the technique of organizing and putting conclusions into acceptable form, and the leading institutions whose primary interest is research.

When the reader reaches the end of the book and pauses to ask himself the question, with what success have the authors pursued their announced purposes? he is likely to discover that something of a feeling of disappointment has settled over him during the course of his perusal of its pages. Here, he will reflect, is a compendium of facts and advices, some worth recording and some not. The experienced investigator, or even the mature student, will conclude that the book contains little that is new and that therefore it is not a work of any great value. It is here, however, that the critic must go back to the beginning and ask himself, what are the ends which the authors hoped the book would serve? When this is done, the conclusions which have been reached hastily must be altered, for the book is written for the neophyte in the field of research, for the senior or young graduate student who plans to continue his studies and who therefore will need to know something of the accepted methods of gathering and analysing data. To be sure, then, parts of it are elementary to the man of experience, but the question is, will they be found so by the embryonic scholar? Bearing in mind the need which the volume was designed to fill, have the authors achieved their purpose?

The verdict must be in favor of the book and its authors. It covers a field concerning which, if the truth be told, the young student frequently is perfectly at sea. It is a fact, palatable or not, that in many colleges and universities in the United States the student escapes altogether any sort of training in the art of collecting data and writing for four full years, thus approaching the fifth, with its thesis requirement, wholly innocent of any knowledge of the proper mode of procedure. Nor can it be said that, in those schools where the term-paper system is in vogue, training in the writing of papers will serve adequately to fill this gap. In many institutions, then, training in research is wholly lacking, while in most others it is supplied only partially and imperfectly. It is the graduate or the near-graduate of these colleges and universities who will find the present

volume most valuable. He will use such sections as Chapter XII, on "The Preparation of the Manuscript," with great profit, and he will find in the book as a whole a valuable introduction into the ways of research. And though it is by the confession of its authors nothing more than an introduction, even the mature student can well afford to keep a copy at hand, for the volume contains many facts of interest and importance not readily accessible elsewhere. Not the least noteworthy among its features may be mentioned the very complete thirteen-page table of contents and the exhaustive seventeen-page index, which combine to place its contents at the finger-tips of anyone who desires to make use of the book.

ROSCOE C. MARTIN.

University of Texas.

LaPaz, Medardo Chaves S., *Los Adelantados del Rio de la Plata.* (Editorial "Renocimiento," 1929, pp. vii, 235, iv.)

Moreira, Miguel Mercado, *Historia Internacional de Bolivia.* (LaPaz: Imp. "Athena" de Crespi Hnos., 1930, pp. iv. 573.)

Moreira, Miguel Mercado, *El Chaco Boreal.* (LaPaz: Imp. "Athena" de Crespi Hnos., 1929, pp. iv, 183.)

Espinoza y Saravia, Luis, *Despues de la Guerra.* (LaPaz: Editorial Renacimiento, 1929, pp. xxiv, 511, xvi.)

The Bolivia-Paraguay Strife. (Washington: The Bolivian Embassy, n.d. pp. 23.)

Achá, José Aguirre, *La Zona de Arbitraje en el Litigio Boliviano-Paraguayo.* (LaPaz: Editorial "Renacimiento," 1929, pp. iv, 65.)

Proceedings of the Commission of Inquiry and Conciliation of Bolivia and Paraguay. (Washington: The Bolivian Embassy, n.d., pp. xiii, 1210.)

Actas y Documentos de las Conferencias de Plenipotenciarios Bolivianos y Paraguayos. (La Paz: Bolivian Government, 1929, pp. iv, 213.)

Ulloa, Alberto, *Habla un Maestro de Derecho Internacional.* (Lima: La Legación de Bolivia, n.d., pp. 91.)

The nine titles heading this review all bear upon the question of the Bolivian and Paraguayan boundary dispute. All of them also represent, with varying degrees of insistence, the viewpoint of Bolivia. The first three are histories by two of Bolivia's outstanding historians. The second three are controversial documents compiled for purposes of propaganda. The seventh and eighth are records of official conferences selected and published by the Bolivian Government, one of them being a rather minute record in English and published in Washington for distribution in the United States. The final volume is by a distinguished Peruvian professor of international law whose opinion favors the Bolivian side of the controversy. The nine titles provide a pretty good summary of the question, historically and geographically, politically and legally, from the standpoint represented. The Paraguayan side is of course not presented favorably.

In *The Adelantados of the Rio de la Plata,* Señor Chaves presents from a frankly nationalistic viewpoint the history of the proprietor-governors who ruled the vast region from present Peru to present Brazil for the kings of Spain in the sixteenth century. The object of this volume is to fix the boundary lines of the various territorial divisions which supposedly form

the basis of the modern political states. Incidentally the volume contains an interesting picture of the conquests of that time. Señor Mercado's *International History of Bolivia* is a standard work, much less partisan than the former volume. It is scholarly and represents a vast amount of research covering the relations of Bolivia with Brazil, Paraguay, Argentina, Chile and Peru since the erection of Bolivia into an independent state. *The Northern Chaco*, by the same author, is a more partisan work covering the history of the dispute between Paraguay and Bolivia over this region. Volumes 3, 5, 6, 7, and 9 of the collection contain a number of interesting maps. This is especially true of volumes 5 and 6. The collection may be said to be indispensible to students of Latin American relations, where boundary disputes assume an importance difficult for us to realize. Reference libraries in particular will find the set useful.

L. L. BERNARD.

Washington University.

Clark, John D., *The Federal Trust Policy.* (Baltimore: The Johns Hopkins Press, 1931, pp. 305.)

This book is a political history of the unique governmental policy which this country alone has pursued with respect to industria[1] combinations and monopolies. It leaves no stone unturned in its effort to record what congressmen, senators, and presidents have thought and said in building up this policy. On the economic side it is equally thorough in picturing that almost perfect vacuum of theory in which professional economists have discoursed upon competition and the trusts with little appreciable effect upon the course resolutely pursued by Congress.

In this purpose the book is successful and entertaining. If one imagines that an anxious public and an alarmed school of economists settled back with relief when the Sherman Act was passed in 1890, he will learn that Congress put it upon the books in a quiet fashion with only moderate debate, and that the professional journals of the time were virtually unaware of what was taking place. From congressional debates on the subject he will learn that the opinions of economists were steadfastly ignored, until the first Wilson Administration, when there was some degree of correspondence between what a number of economists were urging and what Congress enacted. Throughout the book he will find extensive quotation of opinions on the subject, economic and political, extending from 1881 to 1930, much of it worthless in point of wisdom but all of it interesting as part of the history of a policy.

In another of its purposes the book is less convincing. In the final chapter, "A Successful Statute," the opinion is expressed that the Sherman Act, as enforced by the Department of Justice and as interpreted by the courts, has proved a successful and practical means of preserving competitive conditions in harmony with American individualistic ideas. The chapter would serve better as a thesis to be elaborated in Professor Clark's next book then as the concluding chapter of this one. What is meant by a "competitive condition" of industry is left as hazy as is usual in the discussions of lawmakers, judges, and economists alike. It is said, for example, that the over-development of gasoline stations is proof of active competition in the oil industry, while the elimination of bankrupt competitors in the

automobile industry is proof of the same thing. The present effort of business groups to have the law modified is cited as final proof that it has succeeded in its purpose.

All of this part of the book seems to arrive too easily at its conclusion. Yet it is encouraging to find an economist who refuses to line up with either of the opposing schools of despair with respect to anti-trust policy. He insists that genuine competition exists in most industries, and therefore rejects the panacea of government price control. He denies that the anti-trust law prevents business from earning profits by legitimate competitive means, and therefore he sees no need for substantial modification of the law. He leaves one inclined to agree with him that such modifications will not be made by Congress for a long time to come. But with what he has done here on the economic facts of the subject he will not persuade others to his view that this is wholly a cheerful prospect.

D. E. MONTGOMERY.

Washington, D. C.

Willoughby, Westel W., *The Ethical Basis of Political Authority.* (New York: The Macmillan Company, 1930, pp. viii, 460.)

Professor Willoughby's aim in this volume is to examine political authority as it is viewed by the moralist. His inquiry is teleological, "the purpose being the establishment of the ethical rightfulness of political authority as determined by the results which are, or may be, obtained by its exercise" (preface p. v). The present volume complements a work published some years ago entitled *Fundamental Concepts of Public Law.* The two works state the author's political philosophy.

The first chapters of the present volume are given to a review of the anarchist, divine right, force, historical, patrimonial, socialist, organismic, social-compact, German transcendentalist, and Facist views of the coercive right of the state to exist. The theories of the state here surveyed are old, but Professor Willoughby has given them a new and different interpretation. A rather full discussion appears on the theories of Hobbes, Locke, and Rousseau; they are carefully compared and the contract theory is criticized.

After interpreting, discussing, and criticizing the various theories of the state, the author presents his own views on "the true basis of the right of political coercion," the "legitimate ends of political coercion," the "legitimate sphere of political authority," and as to how far the true basis determines some right form of government. He states that there are no absolute rights, no definite rights. To define an absolute test of justice is impossible. Moral philosophy must begin with the idea of society and not with the individual man. Individuals in society come into conflict with one another. There are times when they refuse to compromise. Thus, some form of coercion is unavoidable, but the state is not the only restraining force. There can be no absolute principles that render legitimate the application of political coercion in reference to certain matters. Professor Willoughby states, "If then, it be granted that by giving to a society a political organization, and by resting in a certain man or set of men the legal right of determining, in certain cases at least, when coercion shall be applied to individuals, the result upon the whole is to produce less evil or more good than would be

otherwise secured, then political authority is justified" (p. 258). Thus, the writer has set forth a pragmatic and flexible conception of the competence of political authority.

The last three chapters are devoted to the theories of Duguit, Krabbe, and political Pluralism. Here recent theories which tend to subordinate the importance of the state are analyzed. The author reiterates his former statement, that questions of ethical right or social utility are different and apart from those of legal obligation. He insists that a distinction be drawn between them.

S. A. MacCorkle.

Southwestern College (Memphis, Tenn.).

Holden, W. C., *Alkali Trails.* (Dallas: The Southwest Press, 1930, pp. ix, 253.)

The subtitle, *Social and Economic Movements of the Texas Frontier, 1846–1900,* defines the scope and purpose of this book more accurately than does the title, which, presumably, was chosen to given the volume a certain "flavor" and popular appeal.

The general purpose is, as indicated, to discuss certain social and economic phases of the settlement of so-called West Texas during the latter half of the nineteenth century. By West Texas is meant roughly the territory lying west of the Corpus Christi-Burnet-Fort Worth line. In developing his study the author selected the following topics as most deserving of treatment in a small volume: Nordic immigration; slaughter of buffaloes; cattle kingdom; journalism; division and sectionalism; drouths; mirages, i.e., dreams and hopes of mineral wealth; amusements; railroads; and farmers. With but a chapter for each it is apparent that no one topic could be treated exhaustively. In fact, the author is to be congratulated upon his general success in retaining considerable coherence as well as accuracy and sense of proportion in perspective and detail, so much so as to give the reader the feeling that he has before him something like a panorama and a bit of the drama of the Nordic settlement of the West Texas "empire." The gaps, such as educational development, are obvious; but here again the critic must bear in mind the limitations of space.

As to sources, the author based his work mainly upon a careful survey of the files of local newspapers, making, in most cases, proper allowance for human frailties in the field of journalism.

That there was a need of a scholarly but undessicated study of the western part of Texas few will question. That Professor Holden has made an interesting and worth-while contribution to that study is equally apparent. He is to be commended, also, for his frank admission that, though there is much about West Texas that is distinctive, it is nevertheless true that much of the alleged separateness of feeling is due not to basic differences but rather to artificial propaganda by chambers of commerce, politicians, and local journals for the real purpose, primarily, of securing a more generous allowance from the state's "pork barrel." It is quite likely that the author would readily admit, too, that several of the problems and movements that he discusses, e.g., railroads, amusements, and journalism, though necessary to any well-balanced social study of the area in question, were nevertheless not at all peculiar to West Texas.

After all, the author's major purpose is not to prove the "separateness" of West Texas but rather to add a balanced, readable, well-documented chapter to that great story, the westward march of the Nordic frontier. In that purpose he has, in the main, succeeded.

CHARLES A. TIMM.

The University of Texas.

Jones, Chester Lloyd, *Caribbean Backgrounds and Prospects.* (New York: D. Appleton and Company, 1931, pp. viii, 355.)

Over ten years ago Professor C. L. Jones' *Caribbean Interests of the United States* was published. In this work, one of the first of its character in the field, the author sought to indicate in broad outline the varied phases of Caribbean development, particularly in their political aspects and as they related to the interests of the United States. Now, after an interval of several years, it is the contention of Professor Jones that a knowledge of the economic factors and the economic potentialities of these Caribbean countries should be a prerequisite to a discussion of political development. Consequently, he seeks in *Caribbean Backgrounds and Prospects* to supply an essential background of economic and social factors omitted in his earlier volume. The present work therefore is entirely devoid of political discussion, and is devoted to such subjects as Racial Factors, Health, Education, Sugar, Coffee, the First Trade, Oil, Commerce, Loans and Investments.

The development of the material resources of the Caribbean states in the last generation has been unprecedented and truly has far outrun its social and political organization. Interesting and informative chapters are devoted to the origins, development, and present status of sugar, coffee, banana and oil production. On these four staples the prosperity of the Caribbean depends, a precarious situation which the author suggests might be remedied by diversification. Moreover, the Caribbean depends on the foreigner not only for markets but for capital and initiative. Thus are introduced questions of investments and loans and consequent charges of exploitation. The importance of the United States as a factor in the Caribbean problem is indicated by the fact that this country is that region's principal customer and greatest creditor. This being the case, "those who have in their hands the formulation of public policy will do a great service for the people they represent when they emphasize the importance of maintaining and strengthening the important economic factors which work for unity of interest among the American nations." Professor Jones has performed a real service in presenting the kind of background that is requisite to more intelligent appreciation of the trends of Caribbean history and relations. It is a work which should be of equal value to the student and the layman.

J. LLOYD MECHAM.

The University of Texas.

Harley, John Eugene, *International Understanding; Agencies Educating for a New World.* (Stanford University: Stanford University Press, 1931, pp. xx, 604.)

This is the most recent publication in the Stanford Books in World Politics. It is a study of the various agencies, institutions, organizations and processes which make for world peace. In Part I, the author deals

with the setting for international education, and its needs and possibilities, international scholarships and fellowships, the exchange of professors and students, tours and travel, international houses, the public schools and international education, higher international instruction, and the integration of the higher studies. These he calls "general principles and problems." Part II deals with leading institutions, organizations and efforts educating for international understanding. These include official organizations, institutes, summer schools, special institutes and associations, and endowments. A preface is appended devoted to scholarships for study here and abroad, international law teaching in the United States, foreign students in the United States, and other important statistical material.

A cursory examination of this book is likely to give one the impression that much information has been gleaned from year-books, reports, bulletins, etc., which might well have remained there, and that the republication of such details, even though systematized and made interesting, is not justified. But one who looks beneath the surface will soon discover the debt every international scholar owes to Professor Harley. His philosophy of international relations is revealed in the study of the institutions and processes of peace. His is a mind which sees things in the concrete rather than in their theoretical or philosophical setting. From the long array of organizations and institutions, he has unconsciously developed the principles of peace, as disclosed by practice and experimentation. He belongs to the growing school of men and women who, having ideals and beliefs, as well as knowledge, would do something about the matter.

Every professor of political science, university president, social science teacher or executive, foreign office, consulate, church leader, editor, and statesman should have this book. It will shorten his task in getting necessary but condensed information about international agencies and institutions of all kinds, especially on the educational side. The book is the result of special studies undertaken while the author was a visitor at the various international institutions in Geneva in 1929. There is an introduction by Paul Mantoux.

CHARLES E. MARTIN.

University of Washington.

Marriott, Sir John A. R., *The Crisis of English Liberty.* (Oxford: The Clarendon Press, 1930, pp. xiv, 472.)

This work reviews the entire period of the seventeenth century struggle in England between Parliament and the Crown from the standpoint of the constitutional historian and the student of political philosophy. The disputes of James I with Parliament, the early difficulties of Charles I and his experiment with personal rule, the Civil War, the Commonwealth, and the Protectorate, as well as the Restoration, the events of the reigns of Charles II and James II, and the Revolution of 1688, are all considered with equal emphasis. The story of course has often been told, but it can stand retelling, and at the hands of Sir John A. R. Marriott it is admirably done. His motive, however, is not that of one who is interested primarily in the past. Sir John is indeed gravely concerned about the contemporary tendencies of the Crown toward what Lord Hewart of Bury has called the "New Despotism." What with the passing, in essence, of parliamentary

sovereignty and the passing of the "Rule of Law," both as to the making of law by the representative body and the application of law by the judiciary, into the hands of the permanent officials of the Crown, the present writer envisages a new struggle between Parliament and the Crown, and, therefore, bids us hark back to that of the seventeenth century for whatever lessons it may provide. Tying up present tendencies with the events of that century, he concludes his "Prologue" by writing: "The final result of the prolonged conflict of the seventeenth century was to provide the key of the position to Parliament. Parliament still retains it. If, however, the Parliament should neglect to use it, the battle will have to be fought afresh, under the same flag, on the same field. Our fathers fought against Princes; we have to fight against the Powers which lurk in the darkness of Whitehall and still cover themselves under the Prerogative of the Crown."

"Recent tendencies have thus invested the history of the seventeenth century with a new and arresting significance. It may not, then, be amiss to con once more the lessons which that period is preeminently calculated to teach."

O. Douglas Weeks.

The University of Texas.

Stokes, Harold W. *The Foreign Relation of the Federal State.* (Baltimore: The Johns Hopkins Press, 1931, pp. vii, 245.)

The material dealing with the federal type of government from an analytical and descriptive point of view is indeed voluminous. Learned discussions have appeared treating of the location of sovereignty, questions arising from a division of powers between States and a national government, and of delegated and reserved power. But from the standpoint of international relations practically nothing has been written.

The author gives the first few chapters of this book to a rather general discussion of the federal state, the control of foreign relations, and the position of the member-states in international law. With this accomplished he divides his problem into three main sections: the treaty-making power and the territory of federal states, dealing also with its powers to make international agreements; the effect of definite constitutional prohibitions upon the treaty-making power; and the treaty-making power and the reserved rights and powers of the member-states (p. 62).

As stated in the preface (p. v) the experience of the United States has been emphasized. Every federal state with the exception of Austria has been studied. Australia and Canada receive special attention, and frequent references and comparisons are drawn from the remaining states. The writer brings out the influence of the member-states upon the foreign policy in all federal states is advanced by the existence of reserve powers. "Legally," he says, "the states present no barrier to the contracting of international obligations; yet politically the States do exercise a restraining influence (p. 225).

Naturally the enforcement of international difficulties at times becomes difficult for the federal state. Yet, be it remembered that these difficulties appear to be far more theoretical than actual.

Dr. Stokes has hit upon a virgin field. He has brought together much scattered material, and has succeeded in analyzing and presenting it to his readers in a clear and forceful manner.

S. A. MacCorkle.

Southwestern College (Memphis, Tenn.).

Battaglia, Otto Forest D., (Ed.), *Dictatorship on Trial.* (New York: Harcourt, Brace & Company, 1931, pp. 390.)

This is a volume of essays contributed by twenty-two "eminent leaders of modern thought." Einstein's chapter can hardly be counted since it consists of only three lines. The book is divided into two parts. The first contains descriptions of the historic background of dictatorship together with several theoretical discussions of the subject in its relation to science, religion, politics, leadership and general culture. The contributions in Part Two deal with the actual workings of dictatorship in Russia, Italy, Spain, Turkey, Poland, and Yugo-Slavia, with a final summary essay by the Editor on the general nature of dictatorship.

The chief theme of the symposium seems to be an evaluation of dictatorship as a challenge to democracy. Democracy is presented as a universal and irresistible movement of the past century. But something has gone wrong in the last decade. The liberal governments have failed to meet the tests of post-war emergencies. The prestige of democracy has likewise suffered in the popular faith. For some, dictatorship is the solution. For others it is a false remedy and an illusion, leading people astray from the sound doctrines of individual rights and political liberalism. Must these sacred rights of the citizen be surrendered in the name of necessity, of community interests, and the higher aims of the state? This is the fundamental question. As for the Editor, dictatorship is neither to be condemned blindly nor praised uncritically. Tried by its contemporaries, in the light of the recent travail that gave it birth and the terrible situations that it came to face, the verdict is "not guilty." The final judgment, however, can be left with complete confidence to divine justice. Ossendowski of Russia condemns the dictatorship of the proletariat, but is much more judicious in his treatment than his book on Lenin would lead one to expect. Fascism is both praised and condemned. In fact, the entire book is comparatively free from dogmatic statements and treats the subject from a variety of views and angles. It is a valuable contribution to the numerous studies of post-war political trends.

George C. Hester.

Southwestern University.

Carpenter, Jesse T., *The South as a Conscious Minority, 1789–1861.* (New York: The New York University Press, 1930, pp. x, 315.)

The thesis of *The South as a Conscious Minority* is that for seventy years before the Civil War the South was a sectional minority trying to evolve a philosophy of protection to its interests within the Union. As time went on, the South became more aware of its declining importance in respect to population and economic power. Its philosophy underwent, therefore, a development, and there were forged four successive doctrines. The first was that of Jeffersonian local self-government; the second was Calhoun's idea

of the "concurrent voice"; the third, which was important in the period immediately prior to the war, was based upon an attitude of upholding the Constitution for all it was worth as against the North which seemingly was getting away from it with such ideas as that of the "Higher Constitution"; and, lastly, the secession doctrine, which gained acceptance late and only as there developed a sense of futility in the efficacy of the ideas of the South for remaining in the Union.

The writer states in his preface that the work seeks to treat of "the chief phases of Southern political thought in the order of their historical sequence." "It is this analysis of a minority philosophy traced through its successive epochs of development that represents the possible contribution of this volume to American political philosophy," he concludes. That the work is thoroughly scholarly and very useful to students of American political ideas cannot be doubted. One is inclined, however, to question the implication that the South was continuously and aggressively conscious of its minority status all through the period covered, and that its attitude was quite so consistently that of "rule or ruin."

O. Douglas Weeks.

The University of Texas.

Owsley, Frank L., *State Rights in the Confederacy.* (University of Chicago Press, 1931, pp. 290.)

Professor Owsley's *State Rights in the Confederacy* was first published in 1925. A second printing is now made in order that it may accompany the same author's *Cotton Diplomacy*, thereby offering a more complete picture of Confederate politics during the Civil War. The author's thesis is not a particularly popular one with many citizens of the Old South. He maintains that internal dissension more than the strength and might of the Union armies was responsible for the collapse of 1865. In supporting this contention, he offers an imposing array of evidence on opposition by the member states to the Confederate government's attempts to raise, equip, and maintain armies. Not only did such influential persons as Governors Vance and Brown disagree with the Confederate policy, but they proceeded far in obstructionist tactics.

This little volume is especially valuable to students of federalism, for it reveals the indigenous weakness that constantly threatens a government of that nature. Moreover, Professor Owsley offers many "ifs" for the students of American history. For instance, what might have been the course of affairs if the Confederate states had freely coöperated, at the beginning of the war, in raising and equipping troops? The author remarks that 200,000 additional soldiers might have been mustered into the Southern armies in 1861 if the states had not insisted so imperatively upon the necessity for home defense.

Cortez A. M. Ewing.

University of Oklahoma.

BOOK NOTES

Sophonisba P. Breckenridge's *Marriage and the Civic Rights of Women* (Number Thirteen of the University of Chicago Social Service Monographs, University of Chicago Press, 1931, pp. xi, 153) is essentially a study of the effect of the Cable acts on the foreign-born women in the United States who must now prepare themselves for an independent citizenship. A legalistic approach to the problem is made in the first part of the monograph which is concerned with such questions as separate domicil for married women, their independent citizenship, and defects in our citizenship legislation which the newly enacted Cable law did not correct. In connection with the latter the international situation is discussed, especially with regard to the situation of foreign-born women who by marrying American citizens forfeit their nationality of origin without acquiring a new nationality, and the movement for the adoption of an International Convention dealing with the subject is briefly summarized. In the second part a social interpretation of the problem is given, this division being devoted exclusively to a case study based on interviews with a considerable number of women and some men living in Chicago and so arranged as to present the attitude, the motivating forces and the problems of foreign-born women who have succeeded in obtaining their papers and have become citizens, those who have tried and have failed and those who have not yet tried. With its sympathetic presentation of actual results coupled with an approach that is not too legalistic this monograph is a valuable contribution on a subject that is becoming increasingly important.

H. A. C.

The Correspondence of Jefferson and Du Pont de Nemours (The Johns Hopkins Press, 1931, pp. cxxiii, 293) by Gilbert Chinard, is the second important collection of source material relating to the political philosophy of Thomas Jefferson that has been brought out by Professor Chinard and The Johns Hopkins Press. The initial volume was a collection of the letters of Jefferson and Lafayette. About one hundred and fifty letters are included in this second volume, most of which were written either by Jefferson or de Nemours. Madison, Monroe, and Livingston figure prominently. In a very valuable and lucid introduction to the documentary body of the work, Professor Chinard has discussed the relation which the philosophy of Jefferson bears to that of the Physiocratic school. Heretofore, varying and conflicting interpretations have been offered upon this particular point. Some have contended that Jefferson was profoundly influenced by his French contemporaries; others have roundly denied this contention. Professor Chinard maintains that Jefferson, prior to his arrival in France, already believed in many, if not most, of the Physiocratic doctrines. And though the author never quite does so, he might well have termed Jefferson as the founder of the American Physiocratic School. The author contends that Jefferson's early development of these tenets resulted from the exigencies of the political situation, a source not unlike that which was responsible for the particular conclusions of the French School.

C. A. M. E.

Leo Pasvolsky's *Bulgaria's Economic Position* (Washington: The Brookings Institution, 1930, pp. 409) maintains the standard set by the author in his previous volume on *Economic Nationalism of the Danubian States.* Bulgaria has had tremendous difficulties in adjusting to reasonable dimensions the reparation burden imposed by the Peace Treaties. More than any other country she has availed herself of the good offices of the League of Nations in her attempt to consolidate her economic life. The heavy problem of settling the refugees was tackled with the help of the loan, arranged through the League. Another loan stabilized the budget in 1928. The turning point came in 1929, when the Hague's new reparation agreements reduced financial obligations to a level believed to be "manageable," with the subsequent improvement in the psychology of the Bulgarian people. The author's conclusion is that production must be increased to meet a growing domestic consumption, exports must be increased to meet foreign indebtedness, and a thorough reorganization, especially of the credit system, must materialize. An adequate transportation system is a necessity. Much could be done with the aid of foreign technical experts, preferably under the technical supervision of the League of Nations, if the mistrust of foreigners by Bulgarians could be overcome. Nearly one hundred pages are devoted to documents. It is altogether a fine study of this particular problem and a welcome addition to the literature dealing with the Balkan States—which is, indeed, very small. J. S. R.

A Changing Psychology in Social Case Work (Chapel Hill, N.C.: The University of North Carolina Press, 1930, xvii, 204) by Virginia P. Robinson, Associate Director of the Pennsylvania School of Social and Health Work, presents a new philosophy of social work—not the social work of the last century, but contemporary social work and social work as it is becoming. This is not a new treatise on social-work techniques, but a far-seeing treatment of social work in terms of its emerging philosophy and art. The book is divided into two parts, the first dealing with "Social Case Work before 1920" when emphasis was being placed on the individual. Part Two treats of "Social Case Work, 1920–1930" where there has been a growing emphasis on relationship. The concept of relationship seems to the writer to hold the key to the interpretation of social work. That this philosophy has become articulate, the writer doubts; but that it is implied in present practice she is quite certain. What it holds for the future is still more important. Miss Robinson's discussion is designed to point the way rather than to solve problems. Perhaps the most significant feature of the book is its drawing upon the social sciences, particularly psychology, psychiatry, and psychoanalysis, and integrating the methods of these scientific techniques with the developing science of social work. W. E. G.

Edgar Turlington's *Mexico and Her Foreign Creditors* (New York: Columbia University Press, 1930, pp. x, 449) is the first volume to appear of a three-volume research project entitled *Mexico in International Finance and Diplomacy,* directed by the Columbia University Council for Research in the Social Sciences. The total bonded indebtedness of Mexico in 1929 was $575,000,000. Of this sum over 90 per cent, or $545,000,000, was owed to foreigners. Over and above this Mexico had a floating debt of $450,000,000.

It was to explain the origins and nature of this external debt that Mr. Turlington undertook the present study. In chronological fashion he surveys carefully, even laboriously, the causes, terms and subsequent history of the numerous loans contracted. Somewhat popular conceptions that the struggling Republic was exploited by the foreign bankers are exploded by the author. On the whole, his attitude is very conservative and reflects his State Department experience. A necessarily technical subject is clarified somewhat by a liberal use of tables and charts. J. L. M.

Building the World Society (New York: Whittlesey House, McGraw-Hill Book Company, 1931, pp. xiv, 434), edited by Laura Waples McMullen, is, as the subtitle states, a handbook of international relations. It is made up of selected readings from writers of some competence in the several fields and is intended primarily to give non-academic individuals and groups information on the basic facts of international relations, such as geographic and psychological realities, the historical background, international economic problems, international law, armaments, foreign policy, peaceful settlement of disputes, the League of Nations, and the International Labor organizations. The volume should go far towards meeting the needs of persons and groups who are interested in securing a condensed, accurate, largely non-technical study of the underlying factors as well as the current problems and machinery of international relations. It is, indeed, a hopeful sign that there is a demand in non-academic circles for a book such as this. C. T.

Antonio Valentin-Luchaire's *Stresemann* (New York: Richard R. Smith Inc., 1931, pp. 359.) is a sympathetic and reliable account of the life of Germany's greatest statesman since the war. It is skillfully translated from the German by Eric Sutton. It is doubtful if any other writer has caught the spirit of the man and presented it with the keenness of insight of the author. One is particularly struck by the skillful manner in which Stresemann's developement from a German party politician to a great international statesman is presented. The evolution of his policy of repprochement with France, which became a passion dominating his life, is explained in connection with his own personal growth. After reading this volume one has a better knowledge of the man himself and the part he played in the affairs of post-war Europe. S. D. M., Jr.

Russia's Five Year Plan is the title of a new (1931) book by Michael Farbman which was published by the *New Republic* as one volume in its series of Dollar Books. The author has addressed himself to an objective study of the plan in action, and has discussed both the industrial and the agricultural revolution by reference to such (apparently) authoritative statistics and like factual information as were available to him. The result is a pleasingly written account of the methods and the results of the Five Year Plan, an account which the writer has penned with apparent honesty of purpose. He has done very little sermonizing in his work, and the case-maker either for or against the Communist Regime will find little ammunition therein, aside from what is implicit in the figures used. The narrative

is relieved by the inclusion of four excellent photographic studies which cannot fail to arrest the eye of the reader. R. C. M.

Deportation of Aliens from the United States to Europe (New York: Columbia University Press, 1931, pp.524), by Jane Perry Clark, is a study of the law and the practice regarding deportations, which particular reference to the period since 1925. It is a well documented volume representing a careful examination of court and administrative decisions and containing "cases" illustrating nearly all phases of the problem. The author contends for a larger measure of discretionary authority on the part of the Secretary of Labor, for more effective administrative and judicial safeguards of fundamental rights, for the general improvement of administration, and, finally, for a more sympathetic understanding of the social and international problems involved. C. T.

E. Jordan writes the *Theory of Legislation, An Essay on the Dynamics of Public Mind* (Indianapolis: Progress Publishing Company, 1930, pp. 486) from the standpoint of a philosopher. He is largely concerned with law and legislation as expressions of corporate will. In the later chapters he deals with "Legislation as Speculation," "Legislation as Administration or Social Experimentation," and "The Judicial Process and Its Relations to Policy and Administration." O. D. W.

State Legislative Committees, A Study in Procedure (Baltimore: The Johns Hopkins Press, 1931, pp. 158), by C. I. Winslow is an intensive study of the organization and operation of the committee systems in the state legislatures of Maryland and Pennsylvania. The first chapter, however, is a useful summary of the legislative rules of all the states with regard to the committee system. Professor Winslow notes that there are few studies of the character of his, dealing with committees in individual states.

O. D. W.